

A meeting of the Chili Planning Board was held on July 13, 2004 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Vice Chairperson Don Faso.

PRESENT: Vice Chairperson Ray Bleier, John Hellaby, Dario Marchioni, Karen Cox, James Martin.

ALSO PRESENT: Keith O'Toole, Assistant Counsel for the Town; Daniel Kress, Director of Planning, Zoning and Development; Larry Nissen, Town Engineer; Charles Robinson, Conservation Board member; Fred Trott, Traffic Safety Committee Representative.

Vice Chairperson Ray Bleier declared this to be a legally constituted meeting of the Chili Planning Board. He explained the meeting's procedures and introduced the Board and front table. He announced the fire safety exits.

RAY BLEIER: Before I do an introduction of Board members, there have been two kind of last-minute cancellations. The Maple Hollow Subdivision application. I have a letter here requesting that we table it until the August 10th meeting of the Planning Board. So Maple Hollow Subdivision will not be heard tonight.

OLD BUSINESS:

1. Application of Excel Development, P.O. Box 220, Spencerport, New York 14559 for preliminary subdivision approval of 25 lots to be known as Maple Hollow Subdivision at property located at 30 Dallas Drive in R-1-5 zone.

DECISION: Tabled until August 10, 2004 at the applicant's request.

RAY BLEIER: Also, under the formal application of Wegmans, they're also asking to have their scheduled meeting tabled for a month until the August 10th meeting.

Both Don Faso and John Nowicki are out of Town.

We'll start with the first application here. Is anyone representing the Tim Horton's -- are you ready to go? We heard Lou (Terragnoli) will be a little late.

MR. FARMER: Four minutes. I just talked to him.

RAY BLEIER: Do you want to start with it or would you rather wait?

MR. FARMER: I would rather wait, if you don't mind.

RAY BLEIER: Okay. We'll go to the informals. We will not start the formal public hearing. The very first informal is that of Rochester Cornerstone.

INFORMAL:

1. Rochester's Cornerstone Group - requesting removal of condition #4 placed on approval granted 8/13/96 that Developer shall not remove topsoil from the site of the Union Square Development at property located at 49 Union Square Boulevard. (property formerly known as 138 Attridge Road).

RAY BLEIER: Is there anyone representing Cornerstone Group?

No one was present representing Cornerstone Group.

RAY BLEIER: Not yet. Okay.

FOR DISCUSSION:

1. Westminster Development, LLC, 2601 West 26th Street, Erie, PA, 16506, for proposed auto parts store at property located at 3249 & 3253 Chili Avenue in G.B. zone.

RAY BLEIER: This is just for discussion between the Board members and the applicant. That of Westminster Development. Is anybody representing them?

Jack Gordon was present to represent the application from Westminster Development.

MR. GORDON: I'm one of the principals of the owner who will own the property long-term. Our tenant is Advanced Auto, who we do build to suit lease back projects for. We have done about 45 for them, Pennsylvania, Ohio, Florida. This is a property we currently have under contract.

And I believe everybody has a copy of the proposed site plan. This is not a specifically engineered plan. This is a plan that has been taken from two other surveys that we had available to us, and we put our proposed building and parking and access on that plan. We feel reasonably certain that this certainly depicts exactly what we can -- what we would like to do. There was a taking on Chili Avenue, not too long ago. We did receive those plans, and this property represents that taking, as well.

This being an informal discussion, I guess, I'm very interested to hear what you all have to say and think about this plan so we can come back to you hopefully next month with an engineered plan for a -- for a request for planning approval.

RAY BLEIER: Is your purchase offer contingent upon Planning Board approval?

MR. GORDON: Yes, it is. It is contingent upon Planning Board approval, all permits that would be required to build it and a lease with our tenant.

RAY BLEIER: This is going to move the Advanced Auto Parts store from its present location?

MR. GORDON: That's correct. It will move it from its present location on the in-line plaza, to this freestanding location. This has been their -- their strategy is to move to freestanding locations throughout the country.

KAREN COX: So they can have a bigger store or better parking?

MR. GORDON: Yes, yes. All of those things. It is tough to say why some of these large national chains do exactly what they do, but the store they have here does fairly well, and they are -- would like to commit to the location. Their lease ends relatively soon in their current location, and they would like to have their freestanding building up then.

DARIO MARCHIONI: Excuse me. Can you put a copy on the board? I know it is informal, but at least the audience can see it.

MR. GORDON: Absolutely.

RAY BLEIER: Is this proposed new building going to have any other additional services that are not being handled in the present store?

MR. GORDON: No. It would be the same services, retailing the same merchandise. There are no automotive services or anything like that. This is strictly a retail store. Same one -- for the same purpose that exists now. Larger store, better location. Represent them better.

RAY BLEIER: There was some concern about that road cut onto old Scottsville Chili. Are you still pursuing this?

MR. GORDON: I would like to. I spoke a few times myself and our contractor spoke a couple times with Dan Kress, and Dan (Kress) mentioned that he was -- and he had planned -- he mentioned that he was going to review that plan with Mr. Carr, as well. And to the best of my knowledge, they may have reviewed that, and I have not gotten comment.

JAMES MARTIN: I share the Chairperson's concern. That is an extremely busy intersection at this time. That curb cut looks to be very problematic to me where it is located at that particular intersection. I haven't really had a chance to do a lot of reviewing of setbacks, et cetera, et cetera. I

don't know if there are any variances that would be required from the zoning perspective in locating this activity on this particular corner. You know, I'm not sure at this point if that has been reviewed.

MR. GORDON: First of all, certainly I would like to hear your thoughts on the curb cut on Old Scottsville Chili Road. I do realize it is closer than maybe any of us want to the corner. Ultimately, we -- what we would love, my tenant, is full access from that. Although I do realize you may allow it with a right in/right out only, and that would be acceptable to us and our tenant.

As far as variances are concerned, the building is situated on the plan where it does not require any variances. It's within the setbacks. Although there is parking in front of the building, which I understand requires a variance.

JAMES MARTIN: Absolutely.

MR. GORDON: Besides that, I have reviewed the zoning -- or the ordinance for the signage, and I believe we can meet that to be a pylon sign, 64 square feet per side, 20-foot setback.

KEITH O'TOOLE: 64 square feet total. 32 per side.

MR. GORDON: Um --

KEITH O'TOOLE: Excuse me. I'm incorrect. It is 32 total. That would make it 16 per side.

MR. GORDON: Dan (Kress), you and I spoke about that when I looked at the book.

DANIEL KRESS: The definition of sign area is very specific taking into account both sides of the sign.

MR. GORDON: Okay.

DANIEL KRESS: If you have a two-sided sign, 32 feet per side, that is actually a 64-foot sign which would require a variance.

MR. GORDON: Let's, I guess, be sure I'm reading out of the proper zoning book. From June of 2000.

KEITH O'TOOLE: The sign code has changed since June of 2000.

MR. GORDON: Okay. Then I don't have the current sign code. This specifically says 64 square feet per face.

MR. O'TOOLE: That is not the case.

MR. GORDON: Then I'll need to acquire that.

Our desire is to certainly not require any variances. 32 square feet, 16 feet a side is very, very limited. I don't know what my client is going to say about that. But I may have to come back to you and ask for a variance for that.

JAMES MARTIN: Have you investigated any other commercial areas in Chili Center for viability of location?

MR. GORDON: Yes, we have. To give you an idea, since this is from June 2000, I don't know when you changed the sign ordinance, but we have been working in this area and been looking for a site for a couple of years now, and we have not found a suitable site, one that our tenant would accept.

JAMES MARTIN: Because there is one not too far down the road we would love to see changed into something that looks decent. It is cement block face, used to be called Mike's Bar, center of our town.

MR. GORDON: Which way?

JAMES MARTIN: Basically east of that -- of this proposed site, and it --

DARIO MARCHIONI: In front of Pizza Hut.

JAMES MARTIN: Could be a nice stand-alone operation if you take a look at it. We would love to have that replaced by something, from a planning perspective. So I don't know if that is a site you have investigated, but it is up for sale.

MR. GORDON: I can tell you, I'm not the realtor or the site finder. I'm one of the principals of the land developer company. And our direction with our client is extremely specific. They give us a ground zero and it is literally from this street to this street, and we map and include every piece of property within that zone to find out what is available and what is not, and this is the only piece of property that we found that would fit. So at least for now, this is the property we would like to work with.

JAMES MARTIN: I would love to have you go back and have your real estate person take a look at that other site.

MR. GORDON: Michael's Bar?

JAMES MARTIN: Was. There is a sign in front of it now. I don't know what property -- or

what sales organization has it up for sale. Anybody remember the name of it?

RAY BLEIER: I thought it was Barton.

JAMES MARTIN: It is just down the road. You will see it, because everything looks nice around it, and then there is this rather ugly building standing there, and --

MR. GORDON: North or south side?

JAMES MARTIN: South side.

RAY BLEIER: Right next to the family restaurant that just had its grand opening.

JAMES MARTIN: If you see the sign for the family restaurant grand opening, it is just to the west of that.

MR. GORDON: Okay.

RAY BLEIER: Why, just curious, you're proposing 46 parking spots when 35 are required. Why are you doing the excess? You're having front -- it looks like you will try to have front parking.

MR. GORDON: This -- I agree. 46 is overkill. Our tenant requires 35, as you do, in your ordinance. This row of parking here (indicating), these eight, on the right side of the plan, we would propose to remove those, or at least five of those, and maybe the seven on the left side of the plan to get us down to 35, which would be removing some of the parking from the front, which may lighten the request for the variance.

JAMES MARTIN: Would you be doing spot repair work? I mean it goes on right now outside of the location in the plaza. Oftentimes blocking the fire lane over there. People are out there changing batteries or windshield wiper blades. I don't know what they're doing, but is that part of your business plan as far as the utilization of the parking facilities around the store?

MR. GORDON: As I did mention earlier, I'm not the operator or the tenant. We build for the tenant. They are strictly a retail merchandising business. I do understand that from time to time they offer a service of replacing the battery or maybe windshield wipers or something. They don't have garage bays. They don't perform any larger services like that.

JAMES MARTIN: I understand that. But I have seen people many times outside, hoods are up and they're in the vehicle. It is right in the fire lane, which is disturbing.

MR. GORDON: We certainly wouldn't do that in the fire lane. But I can tell you that they may do that. I have seen it done at other stores. But in a fire lane seems inappropriate.

JOHN HELLABY: How do you go about lowering -- again, I understand you don't know a lot about the operations aspect, but there are no loading facilities I see on the plan. Do you know how they go about loading this?

MR. GORDON: Yes, I do. I do know something about this. The loading dock is on the right-hand side of the building. You will see a structure of a truck there, that comes back to a loading dock, next to an enclosed dumpster. The deliveries for this are done once per week, during business hours, with one truck, so the delivery is done once a week.

JOHN HELLABY: Usually a tractor-trailer?

MR. GORDON: Tractor-trailer, yes.

JOHN HELLABY: So if there are cars parked there, you have to go get those relocated or --

MR. GORDON: Typically that will be restricted for the employees, and that one particular day when the trucks come, the employees will park somewhere else and they will use that. It is not always a tractor-trailer. Depending on the particular location, the route and the needs, it may be a small truck. But they are restricted to delivery once a week during regular business hours.

JOHN HELLABY: I think most all of these stores that I have seen throughout the northeast, basically, all have pretty much the same facade front look on them.

MR. GORDON: That's correct.

JOHN HELLABY: Are there different standards? Because that will be crucial. I mean as far as the architectural treatment and whatnot, as to how this building finally appears.

MR. GORDON: Yes. They absolutely have a national look, and this is -- this is it (indicating).

JOHN HELLABY: I guess the question I am posing to you, are they steadfast with that, or is there room for modification?

MR. GORDON: Again, we want to work within the ordinance, and I did -- I didn't see anything that would disallow this. And I -- you know, we believe, of course, that it is a good-looking building.

KEITH O'TOOLE: If I may interject, we do have authority under the State Environmental

Quality Review Act to impose architectural controls and we have done that in the past. I'm familiar with the architectural treatment, and it would appear to me to be highly incompatible with the properties next-door, particularly the Town property next-door. In fact, not only is the architecture an issue, the front parking to me, particularly in an area which is just off the park area, would seem to be inappropriate. I mean you have the land in the back. Yes, you would have to do a crossing of the street, but if you're going to have the parking, it would be far better to force the parking into the back. And I don't want to get ahead of anyone here, but it would appear to me this may be an appropriate project to do a more thorough environmental review on.

JOHN HELLABY: I agree. That is why I am asking the question. If you proceed with this intent, there will have to be some homework as far as the architectural treatment and whatnot. As Keith (O'Toole) just alluded to, we just don't want this plopped down there with this great big orange lit sign, blazing through the night sky, of Advanced Auto Parts. Again, I understand they have a national standard and whatnot, but we're going to be extremely cautious where we head with this thing.

JAMES MARTIN: In addition to environmental aspects, we'll need a full-blown traffic study on this location.

RAY BLEIER: Why?

JAMES MARTIN: I just think because of the expansion of Chili Avenue, the closeness to the intersection of Old Chili Scottsville Road. I just think that it's in our best interest to understand what impact this may have.

RAY BLEIER: I guess I'm not sold on that myself. They are moving from a store down a little bit further. Even though it is enclosed more -- into a development of -- with other stores, but still -- I don't see where there is going to be --

MR. GORDON: This particular area is the area in town that is zoned for this type of use. I don't know -- this -- we're zoned properly. I guess I don't know where else we would go. This is a corner on one of your major roads. Obviously, we're trying for a commercial retail use, which we are.

The other thing that we propose, in looking at the site plan, going back for a second, is you will see the property on the south side of the stream is unused at all, on our plan. We don't have any use for that property if we can develop the way we have proposed, and if so, we would be inclined to get rid of the property and -- in a gift to the municipality, the expansion of the park or something like that.

RAY BLEIER: If the Town is not willing to take that on, then what would be your treatment and maintenance of that area?

MR. GORDON: We would maintain it the way it is currently. It appears to be -- it doesn't appear to be maintained at the moment, quite honestly. It is a wooded path up through there. There is no current maintenance done on it. But in reality, it separates your park from your municipality building and it seems like it may be something you would want to use.

DARIO MARCHIONI: I don't know if you're familiar with the revamping of the plaza, the architectural drawings of the --

RAY BLEIER: Chili Paul Plaza.

DARIO MARCHIONI: Yes. Their concept of architectural. I think we should -- with this building we should pay particular attention, with this type of architecture, the bank across the street, so we can conform kind of -- comply with the rest of the architecture in the area.

MR. GORDON: Well, it is certainly our desire to comply with it as much as we possibly can.

DARIO MARCHIONI: I have a copy here if you're interested.

MR. GORDON: I am, very.

DARIO MARCHIONI: That's the concept.

RAY BLEIER: As you're probably well aware, there is another auto parts place in that plaza. You can take a look at that. That might give you a little idea as to where we're coming from.

MR. GORDON: That is the direct competitor of Advanced Auto. They're number one and two in the nation. So they're fierce.

Now, I guess my question is, are you asking me to conform to something like this?

DARIO MARCHIONI: Well, in general, so that it doesn't stand out. In other words, to comply with the architecture such as, you know -- flat roofs, if we could eliminate flat roofs.

MR. GORDON: I can tell you honestly, that, like I said, we have done about 45 of these before. And every single one of them looks almost identical to this one.

JOHN HELLABY: I can almost assure you it won't fly.

MR. GORDON: Well, that is best to know now then.

JOHN HELLABY: That is why I bring it to the table. Also in the same avenue, a caution that if you -- you know, if you want to proceed with this avenue, you might want to work hand in hand with the Conservation Board in developing a complete landscaping plan and plantings and whatnot. As Keith (O'Toole) alluded today, before -- for screening from the park and things of that nature. So I mean there is quite a bit to do here.

DARIO MARCHIONI: We have asked other developers, for example, to -- Tim Horton, to change their design to comply with the surrounding architecture, and they were very cooperative.

MR. GORDON: Well, again, my desire is to build it and lease it back certainly. And I would love to comply. I prefer better looking architecture than not good looking architecture. Although, with tenants like this and with many national tenants, they have strict codes, strict rules that they go by, and if I can't give them something very, very similar to this, we won't -- we will not have a project here in Chili.

DARIO MARCHIONI: Okay. We have asked Eckerd in North Chili, they changed their design to change with the surroundings. You're not the only person we have asked, the applicant.

MR. GORDON: Where can I receive a copy of the new zoning?

KEITH O'TOOLE: Town Clerk, normal business hours, reasonable fee.

MR. GORDON: The architectural review that we're speaking of?

MR. O'TOOLE: We have architectural standards contained within the Town code. You can obtain a copy from the lawyer. We also have authority under the State law, and those are contained in the State books. I can tell you, through our comprehensive plan and our planning practices, for a number of years now, we have imposed a requirement that every new structure that has gone up on Chili Avenue, freestanding structure, have a gabled roof, for example. Which would seem highly incompatible with your client's architectural design. I'm familiar with the design. There is one up on Dewey Avenue. I'm not sure -- I'm not trying to offend, but the structure seems more compatible with an industrial environment than it does right next to our old Town Hall.

MR. GORDON: Well --

KEITH O'TOOLE: Since I'm talking here, before this applicant comes back with a plan, I think what we should require, before we even consider hearing the application, is they get permission from Joe Carr for that curb cut. I mean if that were a curb cut on a State highway, D.O.T. would laugh at it. I would be shocked if Joe (Carr) signs off on this. There is frankly no reason for it. You don't need two entrances. I mean it may be that this is not the ideal piece of property, zoned or not. Just because the property is zoned G.B. doesn't guarantee every developer that comes along the opportunity to make it work. It may not be the ideal site for your client or tenant's business.

MR. GORDON: From what I have heard this evening, I would agree with you. But I do have to collect information and show them some data as to why it is not, so I will need the zoning regs.

KEITH O'TOOLE: Very well.

MR. GORDON: I would like to pursue this with Joe Carr and I believe --

DANIEL KRESS: If I could clarify the status of that discussion, I have spoken with Mr. Carr, and I had communicated back to -- I don't recall whether it was you or somebody else in the organization -- that basically he is reserving opinion until he gets more information from your engineer on exactly what it is you're proposing, so I think that is where it stands and I don't know whether it would be wise at this point for you to be thinking in terms of a Plan B.

MR. GORDON: I understand. Will these -- will this situation also be required at Mike's Bar?

RAY BLEIER: Yes. If you take a look at what the building looks like next to Mike's Bar, I think you will get an idea as to what we're looking for.

MR. GORDON: So we're not out of the area. We're still in the same area.

KEITH O'TOOLE: I would point out that the Mike's Bar location, while I don't think you would get away with the architecture, I suspect the front parking, for example, would not be an issue. It is a different location. There is a transition from business to business, whereas here you're transitioning from what would be a business property to the Town Hall property, where we have a lot of kids shooting back and forth, so it might work out better at least in that regard.

JAMES MARTIN: It would be an ideal location for you to look at. Seriously.

MR. GORDON: I'll visit tonight while we still have light. Appreciate your input.

DARIO MARCHIONI: We're not asking of you anything different than we have asked other

applicants.

MR. GORDON: I certainly assume that. Thank you. I appreciate it.

DECISION: The Chili Planning Board discussed the proposal for an auto parts store at the above address. The Board had the following concerns/suggestions:

1. Architectural design of building is a major concern.
2. Appropriate screening to adjoining neighbor.
3. Road cut to Old Chili Scottsville Road (confer with Joe Carr, Superintendent of Highways).
4. Consider other possible locations in Chili.

PUBLIC HEARINGS:

1. Application of Wegmans Food Markets, owner; 100 Wegmans Market Street, Rochester, New York 14624 for preliminary site plan approval for private driveway connection to Chili Avenue for Market Street complex at property located at 249 Fisher Road in L.I. zone.

DECISION: Tabled until August 10, 2004 at the applicant's request.

2. Application of Dr. Robert Fallone, Jr., 3173 Chili Avenue, Rochester, New York 14624, property owner: Towne Plaza, LLC; for resubdivision approval of Lot #1 of the John Deere Subdivision into two lots at property located at 4390 Buffalo Road in G.B. zone.
3. Application of Dr. Robert Fallone, Jr., 3173 Chili Avenue, Rochester, New York 14624, property owner: Towne Plaza, LLC, for preliminary site plan approval to erect a 2,800 sq. ft. Tim Horton's restaurant at property located at 4390 Buffalo Road in G.B. zone.

Lou Terragnoli and Mel Farmer were present to represent the applications.

MR. TERRAGNOLI: Lou Terragnoli. Director of Real Estate with Tim Horton's. I would like to thank the Board for the opportunity to talk about this project again. I do have a new idea for the project that I would like to present.

Also here tonight is Dr. Fallone; if you have any specific questions for him, he is here; and also Mel Farmer, with Sear-Brown.

I think we all agree after the last meeting the conclusion wasn't a result any of us were really happy with, so we tried to regroup on our end, the Tim Horton's end of things, and also with some tremendous input from various Town officials. I'm here to present some new information and for the Board's consideration to try to keep the project moving.

In summary, I have had a couple discussions with Keith O'Toole regarding this since we met, so Keith (O'Toole), as I describe things, if I miss a detail or something, please feel free to fill in any gaps that hopefully I won't leave.

What we're here tonight to ask for is for the subdivision approval and preliminary and final site plan approval. That is not the new information. The new information is we would like to ask for that approval with the following contingency added to that approval. That contingency being, that Tim Horton's will participate in an escrow agreement with Dr. Fallone and also the Town. It will be a three-way escrow agreement. The driver of the escrow agreement is going to be Dr. Fallone. What we're going to do is we're going to take the 2001 approvals that the Board has brought up that have not been addressed adequately to the Board's satisfaction, and we're going to make that our list in the escrow agreement of items that need to be completed on this plaza before the final mylars would be signed off and a building permit issued to Tim Horton's.

The escrow agreement would work as follows: We'll get a detailed list of each item and we'll

also associate a cost of completing each item. We will then take two times that cost, and put it into the escrow agreement to make sure there is a cushion there to properly address each item from that 2001 approval. Tim Horton's will participate in the following way. We would like some timelines to be established for the work to be completed, because then we would like to get our project going.

And Dr. Fallone is very aware of these terms and conditions also. From the date the escrow agreement starts, Dr. Fallone would have 30 days to complete all of the items in the escrow agreement. If that 30 days is to expire and there are one or two items that might be outstanding from that list of approvals, Tim Horton's will have the right to enter the property and complete those items, and also will have the right to be reimbursed from the escrow agreement for those expenses that Tim Horton's would incur to complete those items.

Once again, the overall structure is we're asking for our approvals tonight, but that the mylars or a building permit would -- we would not expect it to be issued until those items are completed.

This is not anybody's preferred way of doing it, but it is a way that Tim Horton's at some point, if the items are not addressed, we could get in and get those items addressed to the Town's satisfaction so that the Town is then happy with the appearance of the plaza. We could then get our building permit and continue on with the project.

Since we have all had the discussions on that escrow agreement -- the escrow agreement is not in place. This will be put together by Tim Horton's attorney in conjunction with Mr. O'Toole and Dr. Fallone's attorney, so all of the attorneys will have their input into the escrow agreement to make sure all of the parties are protected.

But since we first talked about this concept, I know Dr. Fallone has gone in and begun to complete some of the items on that list. I think he would be better to address what he has done and what he plans to do in the near future here to work at the same time that all these other items are going to be taking place. That is an overall summary. As I said, if Mr. O'Toole has anything to add, I would welcome his comments to my summary of that description. I would also welcome any questions or comments that are directly on the Tim Horton's project itself.

RAY BLEIER: Has there been an official transfer of ownership of the plaza?

MR. TERRAGNOLI: That question was posed on Friday and Dr. Fallone made me aware there was. Beyond that, he would be better able to describe that situation.

RAY BLEIER: I guess I would have to ask Keith O'Toole, you know, how do we keep Dr. Fallone in this loop and a part of an agreement with any escrow arrangements?

KEITH O'TOOLE: Well, what we're going to have to do is have the property owner made a party to the agreement.

RAY BLEIER: The new property owner?

KEITH O'TOOLE: That's correct. You can't enter onto somebody's property without their permission and start doing work. That is pretty much a given. If I may, just to follow up on some of the points that Lou (Terragnoli) was raising, basically my understanding of the agreement -- obviously everyone has to agree on the agreement or there is no agreement, but the work will be agreed to by all of the parties, including code enforcement, where we're cleaning up all of the loose ends, either from the 2001 approval or anything else that is out there.

The escrow amount will be the greater of two times the work or \$10,000, just so we have a good chunk of money to work with.

And the Town is acting as an escrow agent, and that is our only liability in all of this. So if the work doesn't get done, the Town keeps the money and that then goes to the General Fund. That is basically the plan, as I understand it. The details can be worked out among the attorneys.

RAY BLEIER: So can we tonight give some type of approval with the condition that an escrow account will be established involving the new owner as well as Dr. Fallone, Tim Horton's and the Town?

KEITH O'TOOLE: An escrow agreement suitable in form and content to the Town. That is the condition.

RAY BLEIER: So we can't then proceed with this?

KEITH O'TOOLE: Well, that's right. Unless everyone has agreed on the document and signed it and the cash has been handed over, certified funds, nothing is going to happen.

RAY BLEIER: Right. Do you understand that, Lou (Terragnoli)?

MR. TERRAGNOLI: Yes.

RAY BLEIER: That is agreeable to Tim Horton's?

MR. TERRAGNOLI: That is. Our attorney will review the document, too, but conceptually, my description along with what Keith (O'Toole) has added was the substance of our discussion. At the same time, I'm hoping Dr. Fallone will continue his momentum over at the plaza, and just keep going. But if we need to have that, it is our intent just to keep going forward with the escrow agreement because then if at some point the work is not done, Tim Horton's can control the situation and get the store built.

JAMES MARTIN: That assumes the new owner agrees to that.

MR. TERRAGNOLI: I posed that question to Dr. Fallone. Like I said, he is here, and he might be able --

MR. FALLONE: He has agreed. That is why I have been doing the work on the property.

DARIO MARCHIONI: Do we have anything in writing? How do we know --

KEITH O'TOOLE: If I may, Dario (Marchioni), we'll know when he signs the document. It is as easy as that.

JAMES MARTIN: Nothing happens until that occurs.

KEITH O'TOOLE: That's correct.

DARIO MARCHIONI: We're approving?

KEITH O'TOOLE: You're approving it conditionally, and I'm the one pulling the trigger. So either the document gets signed by everybody and the cash is handed over or there is no agreement. The agreement fails. As does the permit.

JOHN HELLABY: Who supplies the construction estimate?

KEITH O'TOOLE: We're going to rely on the property owner, Tim Horton's. It is certainly subject to our review. If we don't think the estimates are reasonable, then we can walk them by a local contractor or with DPW or whoever is appropriate. And we'll reject it.

MR. TERRAGNOLI: If I could add to that, since a situation could arise where Tim Horton's is doing the work, we also want to insure that that escrow is sufficient to cover those items, because we would be looking for reimbursement from that escrow.

DARIO MARCHIONI: I have a question. Will the Planning Board be party to this? Will we have a chance to look at the final product, how the plaza is going to look like?

MR. TERRAGNOLI: I would defer to the Town.

DARIO MARCHIONI: I mean once we write off as Board members, do we get to review this?

KEITH O'TOOLE: No. We're just going to treat it as an internal legal matter. We'll have Code Enforcement look at the property to see things have been done in a good workmanlike manner, that the materials used are of first quality, that the installation is done in commercially acceptable standards, in the manner we have come to expect in the Monroe County area. It is not just saying you're going to do X. You're going to do X right.

JAMES MARTIN: If not, re-work has to be done.

KEITH O'TOOLE: If it doesn't get done, the money is not released. And if it is not done right, the money is not released.

KAREN COX: Has anybody taken a look at the rooftop enclosures up there now? Are they up to Town standards?

RAY BLEIER: Dan (Kress) I would like to answer that, please.

DANIEL KRESS: They're certainly unlike any other rooftop enclosures I'm aware of anywhere else in the Town of Chili, and they were certainly in no way approved by the Planning Board, so I think it is up to the Board's discretion if you would be specific as to whether they're acceptable to let me go out there to make sure what I will have to see.

DARIO MARCHIONI: That is the point. Will the Board have a chance to review the architecture over there, or --

DANIEL KRESS: I guess I'm saying you have been presented with a list of items still remaining to be addressed. Certainly one of the -- rooftop screening is one of those, because the work that was started I would characterize as having been started at the owner's own risk. It was not started with any sort of approval on the part of the Town of Chili. So if, in fact, you want to see some different type of screening, now is your opportunity to let me know what it is you want to see.

MR. O'TOOLE: Essentially if you have some issues, let's put them on the list now. The whole purpose is to wrap it up and get it done without coming back for another public hearing.

KAREN COX: I would like -- the rooftop enclosures out there now, frankly, are something that

a homeowner would buy at Chase-Pitkin that might last through one wind storm, but certainly not a winter around here, and they're ugly. They stick out like a sore thumb. So if you're going to be building something in a workmanlike manner, you need to use the correct materials. Something that you buy at a lumber yard. We require people to put board-on-board fence up around their dumpsters. Something like that would probably be a little more acceptable. If -- if this is the way that the rest of the work is going to go, we're not going to get anywhere.

KEITH O'TOOLE: Well, then the question is rather than talk about it conceptually, tell them what we want. For example, the HVAC enclosures, typically what you do, my experience, what I have seen, it is usually aluminum. They're cut. They're -- they're ventilated. They're higher than the HVAC units, but not that much higher. They're color-keyed to the rest of the architecture. Bill Howard's building, the Prudential building has that. I was looking at that earlier this evening. That is a very common way of dealing with the HVAC. Not the only way, but that would certainly do it.

KAREN COX: That would look better than what is out there now.

JAMES MARTIN: Aesthetically what is over there now looks ugly.

KAREN COX: It looks like little mini forts up on the roof.

DANIEL KRESS: If, for example, what the Board is going to come to some consensus on, assuming you do, and to direct me to basically find is -- or look for is some sort of metal screening comparable to what has, for example, been previously approved for the Chili Paul Plaza rooftop units; Mr. Howard's building; even on a very small scale, Phil's Pizza.

KEITH O'TOOLE: I'm sure Lou (Terragnoli) has an architect in his employ that can spec out an enclosure that would be acceptable.

MR. TERRAGNOLI: I like the suggestion, but now I'm starting to speak for Dr. Fallone, because --

MR. FALLONE: Go ahead.

MR. TERRAGNOLI: When you say something like, similar to, such-and-such property, I think it gives us all a good way to focus on what your expectations are, and we can go from there. So we all have to have the same idea in our heads as to what it should look like.

JAMES MARTIN: I agree with Mr. O'Toole, what is on top of the Prudential Building -- the gymnasium there, it is very aesthetically pleasing from an architectural design. What is going up on the roofs over there now --

KAREN COX: It's a joke.

JAMES MARTIN: -- it almost felt like it was something in our face.

JOHN HELLABY: I tend to agree with Dan (Kress), without having something to look at and say this is exactly what we want, we all have different opinions. I would defer to Dan (Kress) saying as long as it meets his professional opinion as to what the intent of the Planning Board is, which I am sure he knows by now, that would be acceptable to me.

MR. TERRAGNOLI: It would be our intent in the escrow agreement, and I mentioned it to Dan (Kress), there would be a sign-off on the Town, you know, that something is approved.

JAMES MARTIN: I would go along with that element, from my perspective.

JOHN HELLABY: Otherwise we could sit up here for two hours, we want this like this. As long as it is acceptable in Dan (Kress)'s opinion, it would be acceptable to me.

MR. TERRAGNOLI: It would be acceptable to us.

RAY BLEIER: I would like to keep Dan (Kress) involved in the follow-up on these additional items, as well. Rather than coming back to the Planning Board, Dario (Marchioni).

DARIO MARCHIONI: Absolutely. The only thing I don't want to see is what is happening right now.

KAREN COX: For curiosity, when would -- the escrow agreement, what is the timeline on that, getting that in place? Is that something that would start immediately after tonight's -- I mean -- sometime within the next week, after this meeting?

KEITH O'TOOLE: My recollection is that we were talking about a 30-day window.

MR. TERRAGNOLI: Right. What we would do, we on our end, Tim Horton's attorney would put a draft agreement together, subject to the review of the Town. We would move on that immediately. Then the 30 days would start obviously when everyone is comfortable with the agreement and would sign off on it. It would be our hope that that happens as soon as possible, because as soon as that happens, the 30 days starts to run. As I mentioned, at the end of the 30 days, Tim Horton's

could go in and complete that list of items. So we would like to get it going as soon as possible.

JOHN HELLABY: You have to give Dr. Fallone 30 days to complete before you can actually step in.

MR. TERRAGNOLI: That is our framework of the agreement.

DARIO MARCHIONI: This is very unusual.

MR. TERRAGNOLI: It is certainly unusual.

KAREN COX: Unusual and unnecessary.

RAY BLEIER: Perhaps we should review the conditions once we -- one is that the applicant fails to remove the encroachment of the parking lot on the Town of Chili's Community Center property.

Second item was that landscaping plans have not been submitted by the Chili Conservation Board.

Charlie (Robinson), have the plans been submitted to the Conservation Board?

CHARLES ROBINSON: Yes. Lou (Terragnoli) personally gave the Conservation Board a rundown and they were accepted.

RAY BLEIER: They were acceptable?

CHARLES ROBINSON: Yes.

JOHN HELLABY: But if I can just interject, that is for Tim Horton's only.

CHARLES ROBINSON: Tim Horton's only.

DANIEL KRESS: Not the entire plaza.

CHARLES ROBINSON: Tim Horton's only.

JOHN HELLABY: So we need to still have the issue with the entire plaza resolved.

KAREN COX: Item Number 2 deals with the entire plaza.

KEITH O'TOOLE: The expectation it is not just the plans, but the installation, as well.

MR. TERRAGNOLI: If I may add, in discussions we have had, there was a landscape plan as part of the 2001 approval. My understanding was we would look to see that that plan be implemented on the site.

KEITH O'TOOLE: That's correct.

MR. TERRAGNOLI: With the exception obviously of Tim Horton's, we have our separate approval, which we'll implement. Then there was one strip of landscaping on -- I don't mean to get too specific -- that was around the building, that is not there. With the exception of those two items, it is that plan we would be focusing on.

KEITH O'TOOLE: The expectation is the vacant out parcel would be stabilized in some fashion, cleaned up, and we're good with that.

RAY BLEIER: So essentially we're dealing with the 2001 conditions imposed on the plaza.

KEITH O'TOOLE: That and any other outstanding issues pertaining to the plaza, which everyone will sit down and agree on.

DANIEL KRESS: The only other item is that the Board is going to issue an approval, both the Board and applicant need to be aware that based on the proposed sign package, at least as in general terms outlined on the site plan, there are zoning variances that are going to be required. Obviously you have already been through that with your other location.

#### COMMENTS OR QUESTIONS FROM THE AUDIENCE:

BEVERLY NEDER, 82 Attridge Road

MS. NEDER: I am concerned about the screening of the dumpsters. Currently one dumpster has been started to be screened with the same stockade type fence propped up by some boards or poles. As I understood from Karen (Cox)'s comment, it is supposed to be board-on-board around the dumpsters.

KEITH O'TOOLE: Correct. That is the standard specification in Town.

MS. NEDER: Will there be individual enclosures for each dumpster?

RAY BLEIER: I don't know. Dr. Fallone?

MR. FALLONE: That is not how -- I mean --

RAY BLEIER: What will you have, one general common area?

MR. FALLONE: There would be like three different areas, one behind Family Dollar, one in the center and then one behind IGA.

MR. O'TOOLE: I don't believe the Town has a single unit dumpster enclosure requirement. We can gang them together as long as they're enclosed.

MS. NEDER: My other question would be, as to the cardboard boxes that are flattened and stored behind the IGA for pickup, will they be required to be put behind the dumpster until they're picked up?

RAY BLEIER: Behind the dumpster or enclosed?

MS. NEDER: I'm sorry. Enclosed.

RAY BLEIER: Inside the enclosure. We can make that a condition.

MS. NEDER: Thank you.

KAREN COX: So one enclosure needs to be made large enough for the cardboard and dumpsters.

MS. NEDER: Yes. When I was there last week, there were four good-sized bales of cardboard to be recycled.

JAMES MARTIN: They were still there today.

MS. NEDER: Is anything going to be done about the condition of the asphalt back there?

RAY BLEIER: Behind the plaza?

MS. NEDER: Behind the plaza, and also the graffiti that is on the wall right now. That should be cleaned up or painted out.

RAY BLEIER: Well, the walls were part of the 2001 specification, that they had to be --

MS. NEDER: As a person in the general public, we have not been able to see the copies of the 2001 conditions. We don't know them all.

RAY BLEIER: We can certainly indicate that as part of the conditions.

KAREN COX: The asphalt, you mean some --

RAY BLEIER: Well, the treatment on the walls in the rear of the plaza.

KAREN COX: What about the pavement behind the plaza? Can that be a condition?

RAY BLEIER: How far can we go, Keith (O'Toole)? Treatment of the pavement on the rear of the building?

MS. NEDER: Right now it is deteriorated. Very little asphalt.

RAY BLEIER: It is more potholes.

KEITH O'TOOLE: I have no opinion on that. I defer to the Board.

RAY BLEIER: That is up to the Planning Board.

KAREN COX: It certainly is viewable from Union Street, and I would agree that it is pretty ugly.

JOHN HELLABY: I think there is more than one player. If memory serves me right, I think some of the humongous potholes are on the bank property.

MS. NEDER: No. This is behind the plaza where we're talking about.

JOHN HELLABY: That back access road, though, part of that is on the bank's property.

KEITH O'TOOLE: Mr. Kress has reminded me there is actually a provision in our ordinance that requires that the parking and driveway areas be stabilized, so filling the potholes would be appropriate.

KAREN COX: Filling them?

KEITH O'TOOLE: Yes. Patching, sealing.

KAREN COX: That is not a real permanent solution.

KEITH O'TOOLE: I defer to greater minds.

KAREN COX: You know how long pothole patches last.

DOROTHY BORGUS - 31 Stuart Road

MS. BORGUS: We have heard reference to some property changing hands. Just what portion of this are we talking about changing hands? What exactly has changed hands?

RAY BLEIER: What has changed hands? I believe the whole plaza has.

MS. BORGUS: The whole plaza?

RAY BLEIER: Yes.

MS. BORGUS: I'm sitting here listening to all of this, and as has been mentioned, I never heard anything like this in the town before. And we're not looking at a hospital to come in here that we have to have. We're looking at a Tim Horton's, which is an amenity, if you will. And I just don't know why

the Planning Board is getting involved in all of this. I don't see any reason for it. I think you are just making life complicated. Let the new owner clean it up. Let Tim Horton's come back. Your problem is solved. Why are you getting involved in all of this?

RAY BLEIER: Well, I believe that the solution of the mutual agreement between the various legal parties for past and present owners as well as Tim Horton's and the Town -- Keith (O'Toole) made it very clear, if one of the four does not agree with the terms, there is no agreement and there will not be a Tim Horton's building.

JOHN HELLABY: I think actually, Dorothy (Borgus), in the long run it ends up being a better deal. Tim Horton's has guaranteed the Planning Board, should Dr. Fallone not repair the items we're making note of today, they will.

MS. BORGUS: In all likelihood and from Dr. Fallone's past history from this Town, Tim Horton's will be having to do it.

JOHN HELLABY: But if you say to Tim Horton's, okay, we're going to go away, it sits out there another, three, four, five years. At least this way you have some control.

MS. BORGUS: New owner or not, they're in violation -- whoever it is, they're in violation of our laws. So you still have opportunity under the present conditions to make them conform, clean up, do what is right.

JAMES MARTIN: We're doing that, Dorothy (Borgus).

MS. BORGUS: I think -- I would like to see the Planning Board keep a hand on this somehow. I agree with Mr. Marchioni. It is --

KAREN COX: Believe me, we will be able to tell real soon whether things will be moving or not.

MS. BORGUS: Because if this Fort Apache look we have over there currently is an effort to circumvent our law, or maybe it is just an in-your-face answer that Dr. Fallone has for our laws, but I can see where this is not going to go well if we don't have some definite parameters here that are acceptable on building materials and compliance time and --

KAREN COX: But that is where Mr. Kress comes into play.

MS. BORGUS: We have to give him something to work with it. The condition says these things have to be -- these units have to be enclosed. If you want to get technical, this Fort Apache look does it. They're enclosed. All you need is a rifle sticking out from the corners, and -- it is -- I cannot believe that anybody could be arrogant enough to think that they could get by with that in this Town. It blows my mind.

JAMES MARTIN: I think we have made it clear, Dorothy (Borgus), we feel it is not acceptable.

MS. BORGUS: Now, Mr. Bleier, you did begin to review what outstanding work had to be done. You didn't complete that. For the sake of the audience, could you let us know what is on that list?

RAY BLEIER: Well, the one -- well, applicant has failed to comply with Condition Number 4 of the Planning Board's decision letter dated November 19th, 2001, regarding exterior treatment of the building and his failure to enclose the dumpsters.

KAREN COX: That is the one that talked about painting over the graffiti.

RAY BLEIER: And applicant has failed to comply with Condition Number 5, the Planning Board's decision letter dated November 19th, 2001, regarding the screening of all rooftop HVAC units. Applicant continues to work on the plaza without the proper permits. Basically, that was it.

MS. BORGUS: I agree with Beverly Neder, that that back part of that plaza is a mess. The pavement is just about nonexistent. It's all broken up. It is potholes, just pieces of whatever was there, asphalt, tarred gravel, or whatever it was. But it is very obvious from the post office. It is very obvious from On Track. It is something that has to be in there. It has to be cleaned up and kept it cleaned up. It is a nightmare back there.

I also wonder if -- is this plan that Tim Horton's has, is this the architectural version that we heard last, or did they have something different? We wanted gables.

RAY BLEIER: Any revisions, Lou (Terragnoli), to your site plan?

MR. TERRAGNOLI: It was our understanding from the last meeting that the architectural renderings were okay with the Board. We are extending the roof line to cover the HVAC. In fact, by coincidence, I was in Columbus, Ohio today and was actually at that building, because the question came up from one of the members here tonight, are you sure that the HVAC will be covered with that

roof line, and I can assure you from a personal observation, they will be.

RAY BLEIER: Thank you.

MS. BORGUS: I was in hopes, as you remember from past meetings where I have spoken and other people, too, we wanted something dressier than last time. I didn't know that that was totally acceptable.

RAY BLEIER: I think you missed a meeting in between.

MS. BORGUS: It has gables?

RAY BLEIER: No.

MR. TERRAGNOLI: It has peaks on the cornices surrounding the building.

MS. BORGUS: If we apply these standards to Advanced Auto Parts, which I'm wholeheartedly in favor of, then we have to apply them across the board. There are some very nice buildings in North Chili. It is better than the one in Gates, but we could still improve on that.

Well, my opinion is that the Planning Board should keep a hand on this project somehow. I trust Mr. Kress explicitly; however, this is a Board of seven and it doesn't hurt to have seven people looking over this project, rather than one. Thank you.

PAUL DOBELSTEIN - 32 Parkway Drive

MR. DOBBLESTEIN: In the interest of expediency, no disrespect. I will address you from back here.

RAY BLEIER: You certainly may.

MR. DOBBLESTEIN: 32 Parkway Drive. I wasn't intending to comment on this project until I heard the subject of pavement and pavement integrity come up. It might have been better to rename as a motif that whole area Town Springs Plaza. That whole area is underlain with very active and very high pressure spring water. I witnessed 5 1/2 weeks of pumping when they dug the foundation for the Eckerd drugstore in that area. They could not stop the water coming in there. And I think it would behoove the Planning Board and through Mr. Kress, all other efforts, to see to it that any pavement repair that occurs in that area take more than simply the form of patching, because patching is exactly the reason that that area behind the plaza is so torn up now. And it will happen again and again and again. The former owner of that plaza knows full well that he had a major problem. He had numerous complaints of people sprained and broken ankles stepping into potholes in the dark throughout that whole area under the former ownership. Having lived in that area, since 1991, and being a frequent shopper in that area, I know whereof I speak. So I would encourage the Board and Mr. Kress to pay particular attention if they expect any pavement integrity throughout that whole complex. Thank you.

BERNICE WILCOX - Stuart Road

MRS. WILCOX: I may have missed something, but I did not hear when this work would be required to be completed, these conditions would have to be met. Will that be in the agreement? Will there be a time limit?

RAY BLEIER: Yes. There is a time limit. Initially, Dr. Fallone is going to have 30 days to comply with these improvements after which if it's not done then, Tim Horton's is going to see to it that it is done. That was another 30 days.

MR. TERRAGNOLI: I think we talked about 60 on top of that, but please keep in mind, if it gets to that point, we can't get our building permit until that work is done. So I think we have talked about another 60 days in the agreement, but it is not going to take that. Because then if we're in control, we need to get our building permit.

MRS. WILCOX: Then this could be a total of 90 days before it might be completed?

KAREN COX: In theory, but Lou (Terragnoli) is right. If they get -- if it gets to the point where Tim Horton's building permit is being held up by this issue, they're going to throw every -- all of the man hours they can at it to get it done to get that out of their hair, so they can go on to what they really want to do. I don't -- they're not going to sit on that. Because they know they're not going to get their building permit.

MRS. WILCOX: I just wanted to be sure it is not going to be dragged on for years and years.

KAREN COX: I doubt it.

MRS. WILCOX: Thank you.

CHARLES RETTIG - Coldwater Road

MR. RETTIG: My question is, it is my understanding that this is being presented at this time as a final plan, approval?

RAY BLEIER: It is a final subdivision and preliminary on site plan, for the Tim Horton's project, and they're asking, I believe, to waive final also at this time.

MR. RETTIG: Okay. I'm assuming the waiver for the final is based upon the agreement in lieu of preliminary standard?

RAY BLEIER: Yes.

MR. RETTIG: Okay. Thank you.

RAY BLEIER: All right. We're at the point to voice our vote on the two applications here. Before we do the first one, we do have to do a SEQR. Is the Planning Board in agreement that we will waive final on this here?

KAREN COX: On the Tim Horton's site plan, I am.

Ray Bleier made a motion to declare the Board lead agency under SEQR, found this application to be an unlisted action and made a determination of no significant environmental impact, based on information supplied by the applicant on the EAF and/or evidence submitted at the public hearing. On SEQR, the Board all voted yes on the motion.

The Board discussed the proposed conditions.

RAY BLEIER: HVAC units. Previously approved structures such as Prudential and what was the other one? That is good enough.

JAMES MARTIN: Good enough.

The Board further discussed the proposed conditions.

MR. TERRAGNOLI: Excuse me, may I interject? I just -- what we have discussed is the landscaping plan that was part of the 2001 drawing, and not going back to the Board, or did I misunderstand?

MR. O'TOOLE: That was my suggestion, but obviously it is their choice.

MR. TERRAGNOLI: Okay.

KEITH O'TOOLE: The discussion I had had with Lou (Terragnoli) was that you do have the power to approve a landscaping plan, though I know, as a matter of custom, you rely on the recommendation of the Conservation Board. And my understanding is that Lou (Terragnoli) had concerns regarding the timing with any interplay with the escrow agreement, and they were hoping that you could approve the landscaping plan that was attached to the 2001 approval.

KAREN COX: Was that reviewed by Conservation Board? I don't recall ever seeing it.

CHARLES ROBINSON: I don't recall 2001 -- that is prior to my time, so I can't recollect if the Conservation Board approved those or not.

DANIEL KRESS: The answer is not. It was to be provided to the Board as a part of condition of approval. The Planning Board saw it, but the Conservation Board did not. The Planning Board as condition of approval said send it to the Conservation Board and it did not.

KAREN COX: So it still stands.

JOHN HELLABY: They still need Conservation Board approval. Like Charlie (Robinson) said, that was over three years. I can't recall what it looks like.

CHARLES ROBINSON: The Conservation Board is coming up, the meeting is the 4th, the end of the month. So the applicant can very well come in and I have it before the Conservation Board at the end of the month. I don't see that as an obstacle if the plans are in order.

JOHN HELLABY: Is a copy in the Building Department?

DANIEL KRESS: Yes.

JOHN HELLABY: We should just grab a copy.

RAY BLEIER: We'll put down as a condition to do this all concurrently.

The Board further discussed the proposed conditions.

KAREN COX: Do not patch the parking lot. You will have more patch than good asphalt back there. So fix the back parking area to the approval of Dan (Kress) -- the Building Department.

RAY BLEIER: We'll leave it up to the Building Department.

KAREN COX: Not patching. It will not work.

JOHN HELLABY: Generally you need to say these are all per Dan Kress' approval, if that is the way you're looking at it.

KAREN COX: Stabilize the area.

RAY BLEIER: We want to have the cardboard bales be enclosed within the dumpster area.

JAMES MARTIN: I don't remember the specifics, where we were talking about exterior treatment of the rear of the buildings. Did that include painting? Or get -- covering the graffiti.

KAREN COX: Painting the back of the building, and in turn that would cover the graffiti. Not just painting over the graffiti, but a complete painting of the back of the building. Stabilizing the area, this -- with the other out parcel. It looks like East Beirut now. Topsoil, seeded, whatever.

The Board further discussed the proposed conditions.

JAMES MARTIN: There are two bases for light poles over there with no light poles on them.

KAREN COX: If they're not used, they should be taken out.

JAMES MARTIN: If they are going to be used, they should have a light pole on them.

DARIO MARCHIONI: There are ditches there. There is a hazard that somebody could trip on. A ditch has been dug on that site.

KAREN COX: Remove bases or install lights in the bases.

JOHN HELLABY: Foremost we need the escrow deal in place as approved by Keith O'Toole. This should be number one.

RAY BLEIER: That will be number one. Indicate all four parties.

DANIEL KRESS: If I may, the Chair of the Zoning Board has repeatedly requested that handicapped parking spaces in that plaza be brought into compliance. A number of them are lacking signs and are not in compliance.

RAY BLEIER: This is in the existing plaza, I imagine?

DANIEL KRESS: That's correct.

KAREN COX: With all of these conditions in place, I'm going to vote yes. But I'm also going to say I wish Dr. Fallon would take direction or use Tim Horton's as an example of what the Board would consider a good developer. Sorry we have to get to this point.

JOHN HELLABY: Yes.

JAMES MARTIN: Yes.

DARIO MARCHIONI: Yes. I think Tim Horton's is a good thing for Chili, especially in that area, and with that in mind, since it is good for Chili, I'm voting yes.

RAY BLEIER: Yes.

DECISION ON APPLICATION #2: Unanimously approved by a vote of 5 yes with the following conditions:

1. Establish an escrow document that is unanimously agreed upon by the attorneys representing: Dr. Robert Fallon, Jr., Tim Horton's, the Town of Chili and the new plaza owners. Escrow account to be greater than or equal to twice the anticipated cost to complete all compliance items stated below which are to be approved and monitored by Dan Kress, Director of Planning, Zoning & Development:
  - a. Enclose with board-on-board fencing all dumpster enclosures.
  - b. Re-do all screenings at rooftop HVAC units with appropriate approved materials.

- c. Paint rear wall of buildings that have graffiti or other objectionable markings.
  - d. Remove paved encroachment of parking lot that is on Town of Chili property.
  - e. Make improvements to driveway and blacktop surface behind buildings.
  - f. Cardboard bales, shopping carts, and all other materials to be stored inside enclosures.
  - g. Where light pole bases are without light fixtures, add light fixtures.
  - h. Comply with handicap parking designation requirements.
  - i. Complete landscaping per plan (see below).
2. Dr. Robert Fallone to complete all items listed above within 30 days after escrow has been established. If all items are not completed within 30 days, Tim Horton's is to complete all items within the next additional 30 days.
  3. Mylars will not be signed until all items are completed.
  4. Applicant to submit landscaping plans for the entire plaza to the Conservation Board for approval.

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  - a. Enclose with board-on-board fencing all dumpster enclosures.
  - b. Re-do all screenings at rooftop HVAC units with appropriate approved materials.
  - c. Paint rear wall of buildings that have graffiti or other objectionable markings.
  - d. Remove paved encroachment of parking lot that is on Town of Chili property.
  - e. Make improvements to driveway and blacktop surface behind buildings.
  - f. Cardboard bales, shopping carts, and all other materials to be stored inside enclosures.
  - g. Where light pole bases are without light fixtures, add light fixtures.

- h. Comply with handicap parking designation requirements.
  - i. Complete landscaping per plan (see below).
2. Dr. Robert Fallone to complete all items listed above within 30 days after escrow has been established. If all items are not completed within 30 days, Tim Horton's is to complete all items within the next additional 30 days.
  3. Mylars will not be signed until all items are completed.
  4. Applicant to submit landscaping plans for the entire plaza to the Conservation Board for approval.
  5. Pending approval of the Town Engineer.
- Note: Final site plan approval has been waived by the Planning Board.

MR. TERRAGNOLI: I would like to thank the Board for their patience and flexibility with this new structure. We'll do the best to get it implemented and done as quick as we can. Also staff and everyone involved. So thank you.

JOHN HELLABY: One last question. What is the time frame on the other one? I don't see any action.

MR. TERRAGNOLI: That was one of the properties Benderson Development sold in their selling of properties, \$2 billion sale, so the new landlord has to sign off on the lease. It is one of these administrative things. Hopefully I'm not here next month saying we're in the same spot. But it is a third-party matter we can't control.

KAREN COX: We have a neighbor from Canada that can't wait for it to open.

MR. TERRAGNOLI: We were hoping. We'll be -- we are ready to go as soon as they sign off on it.

INFORMAL:

1. Rochester's Cornerstone Group - requesting removal of condition #4 placed on approval granted 8/13/96 that Developer shall not remove topsoil from the site of the Union Square Development at property located at 49 Union Square Boulevard (property formerly known as 138 Attridge Road).

Roger Brandt was present to represent the application.

MR. BRANDT: Good evening. My name is Roger Brandt, Rochester's Cornerstone Group. In 1996 at a Planning Board meeting, almost eight years next month, we were going through the approval processes and at one of the final meetings a request was made from somewhere that we not remove topsoil from the site, and we looked at each other and probably late that night, said, you know what, fine, we cannot remove topsoil.

Well, in our development process, we wound up with several large piles. We have an abundance of topsoil. Over the site there was a minimum of 12 inches of topsoil. This was a 102-acre site, of which now all is developed, but in order -- as many of you realize, in order to build roads, build foundations, houses or buildings, you need to be able to remove the topsoil because it is unstable. So we have formed these piles. In fact, we have five piles remaining of topsoil, and I actually took pictures of some of the topsoil piles that are remaining now on the Union Square Boulevard, mostly on the northwest side of the street.

So over the years, the Town has -- at our invitation has helped themselves to a significant amount of topsoil. 1988, 1991, 2001, 2004, because it is a natural resource and it really ought to be

utilized as opposed to being buried. What we would like to do is receive formal permission to remove this condition.

I talked to the people in the Building Department, and to their recollection, this is the only project in the Town that has this restriction on it. And what we would like to do is be able to re-utilize or use this natural resource through a screening operation and -- we screen it. The trucks will take it out the access road, which is the road that is not yet constructed between Westwood Commons, out onto Union Street. During this period of time -- it is a two-and-a-half to three-month process. Monroe Roadways is contracted to acquire the topsoil. They have started the process. They were about two to three weeks into it when they were stopped, and they anticipate that by probably a little later than Labor Day they would be done with the screening process. They would remove the topsoil piles. We have had complaints it is unsightly. Why can't you remove it. Spread it out again. This should take care of that problem as we remove the topsoil. It was about 10,500 cubic yards.

So Joe Carr approached us a few months ago and said, "You know what, it is kind of in your way as you're building your new Union Park project, why don't you get rid of it, work with us and let's see if we can reuse this natural resource," so that is what we were trying to do.

I would be happy to answer any questions about this. I look at it as a simple request to be able to utilize this topsoil as opposed to burying it and not being able to use it, whether it is through the Town, in the Town or other places throughout the region.

RAY BLEIER: First of all, Dan Kress, can you make us aware of any formal documentation or requests for removing any of the topsoil from this site?

DANIEL KRESS: Well, as the Board knows, back in August of '96 there was originally discussion about this. Subsequently -- I don't have all of the correspondence in front of me, but about two months ago Mr. Carr and I both had conversations with Mr. Brandt about the possibility of removing some of that from the site. At the time we were unaware of the 1996 discussion and condition. And as a result of that, we basically said, "Yes, Mr. Brandt, please give us something in writing, and then you can proceed with removing that."

When it was subsequently brought to our attention that, in fact, there was a condition established by this Planning Board back in August of '96 that this not happen, I immediately contacted Mr. Brandt and Monroe Roadways, said, "Sorry, I know what I told you, unfortunately, I wasn't aware of this, and now that I am, I need you to hold up until you go back before the Board."

So on that basis, what I have suggested and what I suggest be a reasonable basis for the Board's decision this evening is to simply confirm that you know what is the quantity of topsoil that needs to remain on the site, versus what is the quantity of topsoil that is actually on the site, so that if, in fact, there is an excess that can be removed without leaving a shortfall for on-site use, then we know how much that is and I would presume that would be what the Board wouldn't necessarily have a problem being taken off the site.

KAREN COX: So there was no topsoil removal being done prior to your con -- yours and Joe (Carr)'s contact with Mr. Brandt?

RAY BLEIER: It has been going on for quite a few years.

DANIEL KRESS: It started subsequent to that. Then as soon -- as I say, I had to have phone conversations with Mr. Brandt's office and Monroe Roadways, stopped out there a couple days later and said, "Guys, you have to hold up until we go back before the Board on this one."

MR. BRANDT: The Town has been using the topsoil.

DANIEL KRESS: I would say it was going for about two weeks with my verbal approval to go ahead. They were not trying to do anything without checking with us first. I have to make that clear for the record.

KAREN COX: That is my question. Has the Town been aware of the topsoil being removed from the very start of the operation, or has --

DANIEL KRESS: Yes.

KAREN COX: Or -- I mean topsoil been removed over a period of years?

DANIEL KRESS: Mr. Brandt contacted me. Mr. Brandt contacted Mr. Carr. Mr. Brandt gave me something in writing a couple months back. On that basis, before I became aware of this, I said, "Sounds reasonable, go ahead and get started." Can't speak to years back, but certainly that was the current state of affairs.

KAREN COX: I mean I understand that there is always going to be an excess of topsoil when

you develop a parcel. That is common sense. And this is the first time I have ever heard of that type of requirement being put on a developer, but I wasn't on the Board at that time, so I am not aware of all of the issues with the parcel. It doesn't -- the reality is there always is an excess of topsoil.

RAY BLEIER: I will read a little bit from the minutes from that meeting. This is Mr. Galloway speaking. And you state that all of a sudden they have an excess of topsoil. He stated at the Board's pleasure, they should tell the developer what they want him to do with the topsoil. He further stated that they're not developing the site to market topsoil. And he said there's no money in marketing the topsoil. He stated it is more of a burden to get rid of the topsoil. He also stated that is the -- oh, if it is the pleasure of the Board to keep it on site, they will keep it on site.

And that's exactly what the condition does specify. There are two conditions involving topsoil. One is that you shall not remove topsoil from the site specifically. And the other one is that the developer is not to haul fill onto the site from off-site locations.

So it seems very clear -- there is a lot of discussion, not so much about the fill removal, or bringing in, in filling. You know, there are a lot of other issues involved with this application. There are quite a few pages in the documentation here involving it. But it was very specifically stated as conditions here. And actually, I was not here for that meeting myself. There were a lot of comments by Bill Deans and John Limbeck at the time concerning this application. A lot of concern there. So here we are today.

Have you been selling, marketing this topsoil to various agencies, either Town or private?

MR. BRANDT: No. Monroe Roadways, who did some of the work out there, is the company that is looking to take the topsoil and they have a -- what they do is screen the topsoil and then they take it to various locations either they're working on, or to people who need topsoil.

RAY BLEIER: I think one of the situations I find a little bit difficult to deal with, this decision was made by a Planning Board that two of the members at that time are no longer on the Board. Joe Nowicki and Don Faso were both there for that particular hearing, and both of them are excused. Now, I hate to try to guess what was behind the reason for spelling out those particular conditions involving the removal of topsoil.

JOHN HELLABY: Ray (Bleier), if I could just interject, because I was on the Board at that time, and memory serves me right and I was at the meeting. I took the time to read this entire thing this afternoon, just to sort of go over it in my mind, and I do distinctly understand there was a lot of conversation -- I shouldn't say a lot. There was conversation relating to the topsoil. I think at the time, basically what it boiled down to was the issue with the trucking, off the site. Ms. Neder had a real concern about the truck traffic and whatnot and after some deliberation as far as talking about trucking in and out, the decision was made that it -- at this time it was better left on site.

Now I will refer to a statement that was made by Bill Deans on page 20, after some of the notes you just made, basically what it boiled down to is Bill Deans stated his own preference would be that it stay on the site for a while. And I think basically what it boiled down to was a trucking issue, trying to keep the truck traffic to a minimum. He said, "Okay, let's redistribute it, let's see that it gets reseeded." I'm not sure that ever got done. But that was the intent, to keep the truck traffic down.

I know subsequently in 2001, there were some discussions further brought into play that some of that topsoil then be trucked off that site that was in the way over to Jet View and build berms and whatnot because it was added topsoil required over there.

MR. BRANDT: Right. That never took place. But eight years later, we sat there, we looked at the topsoil and said, you know what, we're developing that senior housing project directly behind that large topsoil pile. So I think the thought process now is D.O.T. and the Town allowed us to use the stone road, which goes out to Union Street, for this construction project. Currently under construction. Well, maybe this is a good time to get rid of some of this topsoil because where it is situated right now in front of the Union Square project, across the site from Westwood Commons, maybe now is the time to get rid of it, because it doesn't have to go down Attridge Road. It could go on Union Street and where it goes from there is a left or right.

JAMES MARTIN: There seemed to be some concern about the substructure of Attridge Road, it was a restricted highway or something like that.

KAREN COX: It has a seasonal restriction on it.

JAMES MARTIN: When that was put in place. But there was some concern about that, and the weight of the trucks on that road, particularly between February and May or something like that.

MR. BRANDT: That was brought up at some point.

JAMES MARTIN: I had a clarification question. When the screening operation goes in place, isn't that sort of an industrial activity to some degree, and being in a residential zone like that, is that a permitted activity?

DANIEL KRESS: Well, as accessory activity to ongoing construction, it certainly is a permitted activity provided that we have got some specific proposal in place, which is why I had asked Mr. Brandt to actually give me something in writing, which he did, and, you know, ultimately, I'm supposed to issue some sort of permit for that. I was on the verge of doing that when this was brought to my attention, which is why rather than hand over a piece of paper that said, "Keep on doing it," I had to make a phone call to say, "Hold on, new information has come up."

MR. BRANDT: That is a good point. I think if we're ever going to get rid of it, recycle this topsoil, probably now is the time when there is some construction going on, so that you're not in the middle of a subdivision and all of a sudden you have this screening operation going on.

DANIEL KRESS: If I may, with regard to just follow-up on the question of the truck traffic issue, I believe both Mr. Carr and I have made it real clear to various contractors out there that we would like to see the truck traffic go out that stone road, directly to Union Street and not use Attridge, and I believe we have been largely successful in getting the word out to the various contractors and subcontractors to go that route.

However, the other thing that the Board does need to bear in mind is that this particular location is directly across the street from the nursing home facility that is out there, and I would ask if this is going to recommence at some point, that if this is possible to do this in some way that is not immediately adjacent to the road, it will make it easier for people coming in and out of the nursing home not to drive through pavement that is thoroughly muddied by dirt getting tracked off the site.

JAMES MARTIN: Is there another option; that is, not being done on site?

DANIEL KRESS: What I am trying to say, the loading was taking place on the road or at the edge of the road. It needs to be moved a few feet off the road. I'm sure that can be easily accomplished.

MR. BRANDT: Right. The piles were kind of close to the -- so now they have eaten away at that. That is a good point. We should push them back away from the road.

JAMES MARTIN: Is there a better option that the raw topsoil be hauled off site and rescreened at an off-site location? Keep the screening operation right out of there really.

MR. BRANDT: We're only talking about another eight weeks.

MS. NEDER: Rest of the summer, what about the people that are paying \$3,000 a month?

RAY BLEIER: Please, Beverly (Neder), no. No comments yet.

JAMES MARTIN: He answered my question. It will be a considerable period of time for anything that might happen.

RAY BLEIER: Can you give us any idea approximately how much topsoil has been removed from the site? Just ball park.

MR. BRANDT: 2,000 yards.

RAY BLEIER: You estimate according to your letter here --

MR. BRANDT: 10,500. 10,400.

RAY BLEIER: So about another 8,000.

MR. BRANDT: Yes. They're probably about 20 percent complete maybe. Ball park.

RAY BLEIER: Is this over all of the years that the topsoil has been removed? You said it has been going on since about '98, then?

MR. BRANDT: Well, small bits and pieces. I will yield the floor to Mrs. Borgus. She has something to say. I am having a tough time hearing you over her talking. So go ahead.

RAY BLEIER: No, I'm not recognizing her. Not for any comments, no.

MR. BRANDT: Okay.

JOHN HELLABY: The unfortunate part of this whole scenario is, the wait has caused a problem. Actually, in hindsight, it should have been taken off there before the development ever went in there, actually. The cost of the topsoil is nil compared to the trucking cost to load it up, take it somewhere, rescreen it and truck it again. Nobody is going to buy it at that rate. I guess the problem in where it lies is what sort of guarantee -- and again, I can't speak for the Board, should this be lifted tonight -- time frames, access, hours of operation, all of the above kind of things do we get that this

doesn't drag on for the next two, three years depending on what the market for topsoil is?

MR. BRANDT: Their agreement is that it would be -- three months, approximately three months to do the whole thing. They're three weeks into it. That is the time frame that they had to live by. Now, based on the last time, my guess is it is going to carry into sometime in September.

JOHN HELLABY: I need to ask, though, are they screening to sell to individuals at that site or

--

MR. BRANDT: My understanding it is all presold. As soon as they screen it, it is gone.

JOHN HELLABY: So are private individuals coming in off site?

MR. BRANDT: No. Just Monroe.

KAREN COX: We get calls all of the time from the County people looking for topsoil, and we keep a list -- for example, Monroe Roadways, where they're screening topsoil and just let people know that, and they contact Monroe Roadways directly to get a delivery.

JOHN HELLABY: What happens at the end of this other eight-week period should they only truck half of it out of there?

MR. BRANDT: I suppose it could rain for eight weeks, which is highly unlikely, right, with the nice weather we have this summer.

JOHN HELLABY: Do they go away and we face this dilemma a year from now?

DARIO MARCHIONI: Why do we need the rest of the year? That's it.

MR. BRANDT: I mean they -- could the weather stop them, sure. I guess if it rains for the next couple of months, they will not be able to get to it. It is a very weather-dependent operation. But all of that -- that big pile across from Westwood Commons is supposed to be gone, and they have made arrangements and presold it, and they have people waiting for it as we speak.

JOHN HELLABY: Dust control issues? As far as -- you know, again -- that is a dusty operation. Again, it is weather-related.

MR. BRANDT: Good news is we haven't had a lot of dust.

JOHN HELLABY: But there are provisions should it dry out, we could have water trucks.

MR. BRANDT: They have to control the dust. They have to control the road. Because where they were working they did not do as good a job the couple weeks with the road in front there.

KAREN COX: Do they sweep at the end of the day? Do they have a sweeper on the road?

MR. BRANDT: I can't tell you whether they do or don't. But they're supposed to keep the road clean.

DANIEL KRESS: I had that discussion with both Mr. Simmons of LeCesse and also the gentleman from Monroe, and basically, depending on which site was contributing more to the problem, I can tell you on any given day there wasn't necessarily a sweeper out there every day, but certainly several times a week, yes.

RAY BLEIER: I have a question for Larry (Nissen). If this site is developed more extensively in the future, will there be a need to bring back any topsoil for building purposes?

LARRY NISSEN: I guess I have a question in that regard. There was a letter prepared by Gary Smith of Parrone, and he has made a couple statements. Have you seen this letter?

MR. BRANDT: Yes.

LARRY NISSEN: Number one, existing topsoil. Second sentence, "The restoration specified a 6-inch placement resulting in additional material." Are we to assume from this there is enough topsoil on site that will remain that will -- enough to provide a 6-inch layer over the rest of the subdivision to be developed?

MR. BRANDT: And then some, yes. There is an abundance of topsoil. So most of it is stationed on the -- it has grass growing on it now, but it is the north to west side of Union Square.

LARRY NISSEN: It appears -- it is clear there is excess material. I just wanted to be clear on the fact there would be enough to provide a 6-inch thickness over the remainder of the site to be developed.

MR. BRANDT: I asked the engineers -- you have to assure me we're not bringing any back. They said absolutely, we have plenty here.

DARIO MARCHIONI: I have a question. Roger (Brandt), after we remove the topsoil, will you reseed the area?

MR. BRANDT: Yes.

RAY BLEIER: I have a correspondence here that I will read. It is a one-page note here from

Paul Dobelstein.

Paul (Dobelstein), I was out this afternoon when you called. I had been in Town office this morning. Your letter wasn't here. So...

MR. DOBELSTEIN: That is fine. I left the message just to notify you that there was something available for the Board to consider before the meeting, because I had every reason to believe it being an informal hearing we would not be allowed to comment.

RAY BLEIER: That is correct. We all did receive this letter, and I did read it and I'm sure the other members did, but I will just read it anyway here.

"Board members, it has come to the public attention that gross quantities of topsoil have been removed from the Union Square properties Rochester Cornerstone Development site at 49 Union Square Boulevard, North Chili, in direct and intentional violation of Condition Number 4 of the Cornerstone site plan approval of August 13th, '96.

Casual research has revealed the focused, persistent effort on the part of Rochester Cornerstone Development and/or its agent to negate the proscription of the Planning Board and to subvert Chili Town policy governing allowable excavation in the Town.

Illicit contacts for permission to remove soil were first initiated with the Chili Highway Department, Joseph Carr, Superintendent, who apparently granted approval. Removal began at least by summer of 2003, if not sooner. Much of it accomplished with Town of Chili trucks and workers. Continual removal has also involved Monroe Roadways and unidentified others. Continued permission for removal was granted through Chili's Department of Building and Development, Dan Kress, Director. It is our belief that Mr. Kress has now halted the practice. The developer recently applied to the Chili Conservation Board directly in hopes of using that Board's influence to be relieved of Condition Number 4. The Board refused.

Based on the foregoing information, we encourage the Chili Planning Board to enjoin Rochester Cornerstone Development and its agents from any further such activity and to unequivocally deny any relief from Condition Number 4 (retention of topsoil) and to condemn and prosecute all prior illegal acts of removal.

In our considered opinion, circumventing Condition Number 4 would encourage future such acts by precedent and, perhaps, legally challenge. In any event, tampering with such conditions must certainly be subject to proper community notification and formal public hearing. Thank you in advance for your studied and positive response to this appeal."

This was signed by both Paul Dobelstein and also Charlie Rettig.

RAY BLEIER: We also did receive a more lengthy documentation from Beverly Neder, but I think it is kind of repeating a lot of the things. A lot of it is excerpts from the minutes that we all on the Board have read, and considered.

So with that, is there any further discussion from the Board on this issue?

JAMES MARTIN: It is ugly, a huge pile of dirt facing Westside Commons. I don't know what you would do with it.

MR. BRANDT: I suggest we place some -- get the hours of operation for the screening operation. Again, it is a natural resource, and you can bury it and never have it be utilized, but I think it makes a lot of sense. We have plenty of topsoil on the site, so retopsoil the whole project, and why not reutilize it as long as the trucks continue to utilize the construction entrance or exit, and we limit the hours of operation and say, "Look, let's get it done as quickly as we can." Eight more weeks, well, let's get it done as quick as we can. They don't want to set up and mobilize and have a person there. That's not cost-productive for them. I think they want to get in and out as quickly as they can.

RAY BLEIER: Well, another possible solution is, of course, to knock down the piles and spread it out, too, so that it is not as objectionable a site.

MR. BRANDT: But you would have -- when you develop it, you would have to scrape it back up again and then you still have excess, unless -- you can't build buildings at certain -- you can't build it on top of the topsoil.

RAY BLEIER: But this development, there -- that whole site has been going on for eight years, and it looks like there would be quite a few more years before this site is fully developed, if then. We're talking long-term.

KAREN COX: But if you spread out all that topsoil, you have to reseed a gigantic area. I mean that is -- it -- to me it would be less of an environmental concern to have it off site and be using it

somewhere rather than seeding and waiting for seed to grow and meanwhile having it rain and the stuff moving all over the place.

JAMES MARTIN: Plus as I was driving around the site, some of the undeveloped lots have not been mowed. There are weeds growing up in a lot of the areas over there. There are some fairly unsightly things over there at this point. I mean, to spread it around and seed it, that is just going to grow a whole pile of weeds again and probably --

RAY BLEIER: But isn't that the way undeveloped sites generally look, full of weeds?

KAREN COX: That is the way Whispering Winds has looked for ten years.

JAMES MARTIN: There were very unattractive things over there.

RAY BLEIER: I understand.

DARIO MARCHIONI: Do you see any problems in removing it, if he removes this topsoil?

LARRY NISSEN: No. We have a statement that -- from Roger (Brandt) and also from their engineers that there is -- adequate topsoil will remain on the site to restore disturbed areas -- or to replace topsoil to a 6 inch depth, disturbed areas. That is my understanding. I have a concern with the potential for migration of the soils into the storm sewer system. I think that should be protected. And, you know, in moving all of the soil around, we're also treading on the edges of SPDES permit requirements. Anything greater than 1 acre requires a SPDES permit. That is something we would all try to avoid, if possible. So I -- but I would recommend that the roadside catch basin be protected with silt sacks. We want to keep this material from migrating into the storm sewer system and the pond.

JAMES MARTIN: Good point.

KAREN COX: Very good.

JAMES MARTIN: My assumption is you have not scraped anything off the undeveloped portion of the property over there at this point?

MR. BRANDT: No. That is correct.

RAY BLEIER: No, I'm not taking any questions, Charlie (Rettig).

MR. RETTIG: My question is whether or not it is deemed proper by legal counsel to proceed with a vote on the informal for something that was a formal hearing, as to whether or not this should be open for public forum at a future date?

RAY BLEIER: Keith (O'Toole), do you want to answer that?

KEITH O'TOOLE: No. Thank you.

RAY BLEIER: No. We believe we are within our rights.

MR. RETTIG: You can be challenged.

RAY BLEIER: To consider this -- no Beverly (Neder). I'm not going to take a question. Now, please.

MS. NEDER: What about the people at Westwood Commons that are paying \$3,000 a month and the only place to sit is on that front porch and every day it is covered with soil and the constant noise? What about them? They're citizens of Chili, too.

CHARLES ROBINSON: I have a couple of comments and one point of issue for the Conservation Board. Roger (Brandt), you did say the debris that is sifted would be removed?

MR. BRANDT: It will be removed -- there will not be much left.

CHARLES ROBINSON: Everything will be cleaned up?

MR. BRANDT: Yes. It will be a nice flat surface.

CHARLES ROBINSON: Okay. One other comment that was also mentioned in the letter that you perhaps want to enter in the notes. The Conservation Board's position on this matter was not that we refused. It was stated to the fact that it was totally out of our hands, and that we did not have the power to overrule nor change any ruling by the Planning Board. So just for the record, the Conservation --

RAY BLEIER: That is entirely correct.

CHARLES ROBINSON: The Conservation Board did not refuse. We deferred to the Planning Board of which we serve.

KAREN COX: Good point.

MS. NEDER: I would make one further request that my letter be read into the minutes.

RAY BLEIER: On the issue of the request to remove Condition Number 4 of the 8/13/96 hearing, that the developer shall not remove topsoil from the site of the Union Square development at property located at 49 Union Square Boulevard.

JOHN HELLABY: I guess I wouldn't personally have a problem with it, but I would want to hear some stipulations here as far as hours of operation, and again, I would be a stickler. I would say 7 to 5, five days a week. I know it is not a big window, but again, you're in a situation over there where you have got people. It is not a clean operation. That is a given. All the trucks need to enter and exit via some other avenue than Attridge Road, and I would be more inclined to look favorably on this should that screening operation be somewhat shoved down the street, and so what if you have to loader that stuff down there. Get it out from right across the street where it is right now.

JAMES MARTIN: There is a lot of empty space over there.

JOHN HELLABY: I don't see a reason it can't be pushed in there. You pick it up a load bucket at a time. You will burn up a little more fuel because you're not next to the pile, but you would alleviate some of the dust problem of the residents there.

MR. BRANDT: If it is pushed further back behind from where they have been doing it -- you have a 50,000-square-foot building going up now and trucks and tractors running around, so it is not as if this is a virgin site without construction.

JOHN HELLABY: Once again, I guess I'm not there to please the operation. I defer to the Building Department. If they're comfortable with that, I guess I would be comfortable with it, but I would be hard-pressed, you know, to bend on those hours. Again, 7 to 5 above, five days a week and give these people a weekend to recoup.

RAY BLEIER: Is that workable for you?

MR. BRANDT: I think so. I'm not the contractor, but --

RAY BLEIER: I'm looking for something more than "thinkables."

JOHN HELLABY: They won't appreciate it, because I know the business. But you also have to understand these peoples' concerns. They were told something, and now it is a different story. In hindsight, it should have all been done up front and done with it.

KAREN COX: It is usually not done after you have got homes and buildings on a site. It is usually done right then and there.

MR. BRANDT: We had complaints about the pile. Now we want to move the pile. We are having complaints about moving the pile. Should have been done --

JOHN HELLABY: I would give the windows, at the end of eight weeks, push it back up, seed it, and get lost.

KAREN COX: Weather permitting.

JOHN HELLABY: If you don't get eight weeks of rain. Otherwise, this could drag into late October.

RAY BLEIER: If you're going to set a time frame, you better set it, you know, and put in a safety factor for weather conditions.

JOHN HELLABY: We'll I'm deferring to you guys.

DARIO MARCHIONI: The rest of the year.

KAREN COX: No, no, no, no.

KAREN COX: Why can't you say eight weeks, weather permitting or --

RAY BLEIER: Then who is going to decide what is weather permitting?

MS. NEDER: If you refer to the code, the permit is only good for three months.

RAY BLEIER: Three months. Be completed in three months.

MR. BRANDT: I think they were working on Saturday morning.

JOHN HELLABY: October 1st, and they're done. It still gives them three or four weeks of seeding time to get it reseeded.

KAREN COX: That is the other thing, the seed does not take, does not grow well if it is planted very late in the year. It doesn't grow at all.

JOHN HELLABY: First couple of weeks of October is fine. I give until October 1st and then that's it.

RAY BLEIER: One is hours, 7 to 5. The second is the October 1st completion.

JOHN HELLABY: Five days a week.

RAY BLEIER: Right. Five days a week. That is Monday through Friday, not Sunday to Thursday.

JAMES MARTIN: Restoration of the property to the satisfaction of the Conservation Board.

RAY BLEIER: Dan (Kress) mentioned earlier, you want the screening operation moved away.

DANIEL KRESS: Sufficient distance from the roadway that there is room for gravel or other measures to be put in place so that by the time the trucks and equipment are coming back out onto the road, the dirt has already mostly been knocked off the tires.

KAREN COX: Stabilized construction entrance then.

LARRY NISSEN: Yes, exactly.

DANIEL KRESS: I don't have a magic number in mind. I just don't want it loaded right at the edge of the pavement.

MR. BRANDT: We can work with Mr. Kress and get out there and say, "Where are we going to do this?"

DANIEL KRESS: We can find some reasonable place.

LARRY NISSEN: Erosion and sedimentation control. Did you get that?

KAREN COX: Around the existing drains?

LARRY NISSEN: To prevent migration of soils silting into the waters of the State of New York.

MS. NEDER: Will all conditions of the excavation permit, including the fees, and penalties, be adhered to?

RAY BLEIER: We're specifying these set of conditions.

MS. NEDER: There are also requirements in the code that a permit be obtained, a tax search be done, a diagram be completed, barriers erected and a fee to be paid.

RAY BLEIER: Dan (Kress)?

DANIEL KRESS: I would think it would be helpful to issue something in writing.

RAY BLEIER: So we'll ask Roger (Brandt) here to resubmit a permit application for excavation.

DANIEL KRESS: Frankly, I have already got a written request from Roger (Brandt) to that effect. I will be happy to review that and make sure we have fully documented either between something I have asked Roger (Brandt) to put in writing or something I will put in writing that whatever conditions the Board sees fit to establish are followed.

KEITH O'TOOLE: Applicant shall comply with the code of the Town of Chili.

DECISION: Approved by a vote of 4 yes to 1 no (Ray Bleier) with the following conditions:

1. Hours of operation to be 7:00 a.m. to 5:00 p.m., Monday through Friday.
2. Completion of topsoil removal by October 1, 2004.
3. Implement erosion, sedimentation control.
4. Restoration of area where topsoil is removed.
5. Truck traffic to Union Street only.
6. Locate screening and processing of topsoil away from roads, to be monitored by Dan Kress, Director of Planning, Zoning & Development.

MS. NEDER: What about condition stated on 2/13/01?

RAY BLEIER: I don't know what that was.

MS. NEDER: "Developer shall redistribute topsoil and seed same in manner approved by the Building Inspector onto other lots in Union Square Subdivision with the exception of any topsoil donated to the Town of Chili. This condition shall be satisfied before a C of O for Union Park is issued." Is he asking for relief of that condition also?

RAY BLEIER: The application was exactly as I read it. It referred only to Condition number 4, the 8/13/96 meeting.

MS. BORGUS: I guess he is still stuck.

MS. NEDER: As I see it, there is still a condition of 2/13/01.

RAY BLEIER: Well, this would actually precede -- well --

KEITH O'TOOLE: I think the intention of the applicant is fairly clear here. He is asking for

permission to remove topsoil. You have just had a vote and the answer is yes, with conditions. So I believe that supersedes any conditions relating to the requirement that the topsoil be retained on site.

FOR DISCUSSION:

2. Niagara Car Wash, 5 West 10th Street, Erie, PA 16501 for proposed car wash at property located at 3270 Chili Avenue in G.B. zone.

MR. MUTH: John Muth (phonetic), principal of Niagara Carwash, who is the actual operator. With me this evening is David Sadaly. 5 West 10th Street, Erie, PA, both have same address. First I would like to thank the Board for letting us introduce ourselves and our project and give us some feedback. This is our first time before you. We would like to make sure obviously what we're doing will fit with your approval and fit nicely into your Town. Thank you to the solicitor and officers. I won't belabor this for too much longer.

We started our carwash, just by way of introduction, in Erie, Pennsylvania. We have four operating. Three are the new ones. Branding is very important to us, so we try to keep them looking the same as much as possible. That being said, we understand we'll have input from you. Hopefully you will find our building is attractive.

The address where we are hoping to acquire, the site is 3270 Chili Avenue. We hoped to group it in an automobile mobile service area. There is a service station across the street. There is a Valvoline next to it. And then there are a couple properties for sale on the other side for, you know -- the signs are for commercial which obviously makes sense on Chili Avenue. This is an existing facility in Erie, PA (indicating). This is not really pursuant to any requests or zoning.

We added peaks to the buildings just because we didn't want to the traditional block-looking carwash. I can see you probably feel the same way. We have our own neighborhoods. This is in our hometown. We propose to build the same thing here and try to dress it up somewhat. We do about million dollars in site improvements, which is unusual for a carwash, but we hope a lot of that obviously goes into the exterior and appearance and we hope it looks nice. That is just another view (indicating), kind of showing you how this one sets up for access, and out front you can see there are vacuums usually with canopies. You will see from our site plan, we're going to be requesting to put some of those on. They will not be facing the road like they are here. Because of the constraints of the site, they would be parallel to the street.

Another view. This is kind of from the side (indicating), showing a car exiting. This is the back (indicating). Different from this site, the ones that we're doing remote in New York, we continue to try to improve. We have done away with the wall packs. What we are replacing those with is lighting at the exterior of the premises, facing in, angled down, so there is no light bleed off to any neighbors or any neighboring site, but the site is still safe and lit. Those wall packs there (indicating) won't be there in your neighborhood. That is just kind of an improvement. These are the lanes (indicating) where the cars would come in. You can see there is somebody right there getting ready to use one. It is three automatics and three self-serves. This is a touchless carwash. This is not anything that you would have seen in New York State or in your area before because the technology is from Texas, and we have adapted it to the northeast. It is kind of new and does a real good job.

This is our pump room (indicating), and as you can see, we kind of dressed up the storefront a little bit to make it not look like a pump room, but make it more blend in with surrounding businesses in a retail area.

That is just an environmental kind of little pitch thing that my engineer has in there. You know, indicating the -- the benefits of going through an organized carwash. You know you will see when we do submit plans there is an oil operator. We take a lot of extra environmental steps to make sure that the stuff we're taking off the car, you know what I mean, doesn't cause any problems.

This is the site (indicating). We're hoping to improve the looks of this significantly. When we put it -- we think we have a nice look. Also, these are -- while they're unmanned, we have a very clean operation, a very safe operation. The whole thing is monitored by re -- remotely by 24 hours a day bank of cameras and we run tape, and we actually stopped a counterfeiter that way, but also what is important to us is that people feel safe. They feel this is clean, this is not -- you know, if it was run down or we don't operate it or keep it painted fresh, we lose our appeal, which is what we think makes

it work.

That is the Valvoline next-door (indicating). That is the rear yard behind the wash (indicating). We kind of put this picture in so you can -- you see the white structure to the left is the building, and the distance between that and the nearest neighbors. It is pretty far. We're lucky here because those are long, kind of large backyards that are additional to the 67 feet from the back of our building to the back of the site.

And that is another view to kind of show you what we have going on.

This is the layout we're proposing (indicating).

Where all of the little dashes are, those are the bays for the automatics, and it is facing in such a way where the narrow part is our frontage on the road. There are existing curb cuts which were just replaced with the taking. We have taken into account the taking, as you can see. This is a rough diagram. Obviously we would replace this with something, you know, on a more engineered paper, but like I said, we're a small operation, and Dave being an engineer and -- frankly, in the very preliminary stages we save some money to show it this way. You can see we bring them to back to stack up. That is where they come out.

The wash bay -- each bay cycles every seven minutes. You might say why does he have three automatics. It makes it more expensive for us because there are no traffic problems with three automatics because they're staggered when the cars are exiting. The guys in the self-serve bays, it is different, where you wash your car. But the automatics is what everybody really likes once they try them, and that is where we do the majority of our business. That would stagger in, so no more than every three minutes a car is coming out. That is important because of traffic. We're not a traffic generator. Very few people leave their home, go wash their car and come back to their home. We're more a trip on the way somewhere else. People going to Wegmans, et cetera, will stop and get on and off. And it -- it kind of goes along with the hours -- the hours go along with the traffic on the road. So at night we have much, much fewer customers, and in the day, hopefully we'll have as many as we can get. But this is kind of a tested and true, with, you know, like I say, a few sites in operation for about a year now, in Erie, and tested, planned -- traffic plan. We never have had a problem with back-up onto the street. Never had a problem or caused a traffic problem. This is similar to one we have on another site top layout.

I would like to entertain any questions the Board might have or input they have for us as we proceed.

RAY BLEIER: There is a little sensitivity issue in that the neighbors behind you are in a residential zoned area, and you really have to have excessive screening. I heard you say 24-hour operation, unattended, and there might be some objection to that particular length of operation, you know, overnight, because you do have residents behind you. There is some notation about, you know --- it is similar to the Valvoline. Well, the Valvoline oil change place, their hours, I think they're over about 7 o'clock at night. So they don't get into some of those situations.

You are, it looks like, packing quite a bit into a relatively small parcel. In summertime there is probably not much concern about a lot of cars backing up for service there, but in winter, of course, you get that snow and salt, you know, if you do -- you do get that. We have witnessed that in other carwashes in the area, where cars actually end up out on the main road, and that's a very undesirable situation. Those are some of the thoughts that I myself have had.

KAREN COX: You kind of expressed what I felt, the concern I felt for a 24-hour operation with residents right behind. Do these automatic carwashes have a dryer with them? Now you're talking some noise being generated.

MR. MUTH: We have done our -- this is a fourth-generation business, even though we have not been in the carwash business. We have been a family kind of retail developer, and you know, none of these things are new. We purchased one of those meters, first out. We measured back to the back of the site, and the ambient or regular reading that would you expect at night. So we took another site on a similar road. We went back the same distance to where the property would be, and the ambient reading would be 60, what we would expect to be the same. We have retrofitted these differently than the technology existed, so before the carwash kicks on, the back doors go down. Although it is very rare somebody goes through automatic in the night. It is hard to not make them 24-hour because they're automated unmanned. It is a nine decibel difference. 150 feet back, which is about 50 feet up from the nearest house, like 200 feet back, it is a 5 decibel difference between ambient noise at night

which is very, very quiet and what you can hear. The reason I bring that up is because a neighbor's residential air conditioner kicking on at 30 feet away is the same difference. So I mean windows open, if you struggle to hear it, you may notice the dryer went on. It is certainly not anything that would wake anybody up. Windows closed there is no way you could detect it and I'm guessing by the time you're 200 feet back, it washes it out. There is just too much ambient noise, even a breeze that would interfere with you being able to hear it.

I have heard loud carwashes and understand what you're saying, but we take different measures. The problem with the carwashes, if they were smart, they would have their doors go down. We bought more expensive equipment than your average carwashes. They're quieter and by the time you get back to residential, you can't hear it. That is another reason why we addressed the lighting. Although the wall packs light studies show they don't bleed off, we don't want them an eyesore for the people. If the light was shielded and angled down, they would not be able to see the light when they looked out the window toward the carwash.

KAREN COX: That is the kind of thing we have been asking for. Dark sky lighting.

The Mobil station on the corner of Coldwater Road -- or in Chili Center. Is that open 24 hours? I'm not --

JOHN HELLABY: Yes.

KAREN COX: I'm not down here at that time of night. The Mobil, that has a carwash that is an automatic. And theoretically somebody could use that in the middle of the night.

MR. MUTH: As a practical standpoint, it is very rare. I mean --

KAREN COX: What I am trying to figure out, there are houses around.

MR. MUTH: That one is a lot closer.

MR. SADALY: Plus the Mobil is called old technology.

KAREN COX: Correct. I'm just trying to establish if it is used -- if that carwash is used at night, and if there have been complaints from homeowners, just to kind of --

RAY BLEIER: It is a one bay.

KAREN COX: It is old.

MR. MUTH: We do have carwashes with houses a lot closer. We told the neighbors when we came in where we were building it what we were doing. That is where we came up with the idea of putting the doors down at night and it really did work well. We went back after we built it. No problems, no complaints, couldn't hear it. So that made us a little more comfortable. These are twice or more as far as away, these homes, than those homes.

JAMES MARTIN: Are your doors that come down, do they have acoustical absorption material in them?

MR. SADALY: It is a plexiglass carwash door that you can see. I mean that is also for security, but it is cellular, so there is air space between the cells. I don't know what the STC sound rating is of the door, but it does take the sound down.

MR. MUTH: You know, I apologize, we're a smaller operation so we don't have like -- it is not expert, so to speak, but what we did is get the noise meter. We saw it does work.

JAMES MARTIN: Your decibel measurements that you indicated, were they made with all three bays operating simultaneously or just one bay?

MR. MUTH: Just one. We could give you measurements with all three. The difference is maybe going up a point. Because it -- we realistically, we -- we have never had all three bays operating at night. We do our business typically 6, 7, 8 o'clock at night. We do it a lot on Saturday mornings, between 10, 11, 12, you know, typ -- probably when you would expect people would be running errands. It is not to say it couldn't ever happen, but it hasn't ever happened where they're all being used. We are driven by traffic, and when the traffic goes down, our business goes down. Less cars on the road. If a car is coming by on the road every two to three minutes, you would have to have three pile up there somehow.

JAMES MARTIN: Are the self-service bays open bays?

MR. MUTH: Yes. Those don't have dryers, and they don't generate the noise that an automatic carwash does going back and forth.

JAMES MARTIN: Pressure hoses?

MR. MUTH: Yes.

JAMES MARTIN: They can be noisy.

MR. MUTH: That is a good point. We could take some measurements.

JAMES MARTIN: I would like to know how much noise is coming out of the bays from the pressure hoses.

KAREN COX: That is all right. The questions I asked were all of the ones I have, so --

JOHN HELLABY: Well, I'm thinking you were here when we were talking to the auto parts dealership about the architectural treatment. I would strongly suggest you take a close look at Valvoline and the bank next-door as to how do we complement this, not how do we stand out from this kind of thing. I see in your photographs actually you have a white -- I don't think that is going to appeal in this neighborhood. An off white or something to what they're doing -- the stuff with the plaza might be a little bit of a better idea or venue.

As far as the screening and whatnot out back, that was all right. The only other thing that I would be hard-pressed to approve is the vacuums located directly out front on Chili Avenue. They have to go out back somewhere. Take a look at how you can jockey it back around in the corner or something, but that is not the place for them.

JAMES MARTIN: I agree.

MR. MUTH: The color of the stucco of the plaza, I'm not familiar with what color it is.

JOHN HELLABY: I don't know if they have started down here, but they're putting a Drive-it type system on, and I think if memory serves me right, it was a beige.

MR. MUTH: This is Drive-it. I need better pictures. These are very washed out pictures. If you look close to the pavement, you can see it is obviously not that white. But the -- but the beige is very similar to a CVS because frankly we kind of stole that color. We could tone it down more.

JOHN HELLABY: But again, I caution you, being that Valvoline and the bank are right there, think along the lines what can we do to complement one another, not stand out and say "here I am kind" of thing.

RAY BLEIER: You might want to indicate, too, where the queuing of cars is going -- could take place, and about how many cars you might be able to cue off the road.

MR. MUTH: We can actually kind of make you a diagram showing you that. This site, good for us, it is nice and deep. There is a lot of room for two lanes queuing, which is what we have done on the other sites. I can tell you we have never ever spilled out onto -- I have seen what you mean, and one of the reasons we don't do that, I will just point out to you. You see the bypass lane. A problem with many carwashes is once they get their customers -- and I'm not criticizing any particular carwash, I don't know who is around here or how they're set up -- they don't want to let them out of line once they get so far so they don't have an escape on the side. Some do. But when you do that, you can have people lined up two deep, they can't get out of line. Ours is set up so that typically -- we look at it a different way. If a customer has a cell phone call, we want them out of line so they come back. We have seen them get out of line, once the cue gets long enough. We think that is one of the reasons we have never stacked onto the road. We would rather lose that customer that day and kind of keep them over the long period. Most of these people who come here live one or two miles away and that is it. That is just typically where you wash your car, is close to home. It doesn't do any good to trap them and never have them come back.

RAY BLEIER: How is the square footage of this parcel compared to square footage of some of your existing establishments?

MR. SADALY: Um, this only has two self-service bays, but our typical site is 156 wide and 161 feet deep, so as far as utilization of this site, I mean this is based on square footage, this is our typical site.

MR. MUTH: So the typical building is one bay wider. We removed a self-serve bay.

KAREN COX: To be able to get that two-lane stacking?

MR. MUTH: To get the two-lane stacking. If we would have taken away the bypass lane, and gone down on stacking, we could have got our typical building on the site.

MR. SADALY: This property, I mean just the site lends itself because these two curb cuts (indicating) were existing, and having this angular side (indicating), I mean our -- our sites are usually square, and that is why we deleted one self-serve bay.

KAREN COX: Since this is a change in use, what would the State say about the two curb cuts there?

They were -- as my experience has been, you know, if the time comes when the site is going to

be developed, the developer will need to obtain a permit from the State D.O.T. for work within their right-of-way. But since there are already two curb cuts there, I don't believe they will deny a second -- I don't believe they will make the developer close one off, especially since it is zoned commercial. They may require -- right now they're 24 feet. They may require something a little wider. They do have -- the New York State D.O.T. has commercial driveway standards. They do have -- if I remember right, they have those on their website.

MR. SADALY: I just took these right off -- in fact, I stopped down to the -- I guess Mr. Carr is the Superintendent, and actually I got the improvement drawing for this area and that is how I located those.

KAREN COX: One would hope that you don't have to tear up a relatively brand new driveway opening.

MR. MUTH: It looks nice. The improvement looks good there that part of the road. Didn't a month ago. But it looks nice now that it is finished.

KAREN COX: There are two there now. I don't believe they will make you close one up.

JAMES MARTIN: I agree with Mr. Hellaby on the location of the vacuums. I mean they look cute with the canopies, but I don't think they would fit being out next to Chili Avenue. So I think again, if you relocate those, somewhere on the site, I would want to know the noise levels being produced by the vacuums because they may move them closer to the residential neighborhood.

Do you use recycled water or all fresh water?

MR. SADALY: All fresh water. We have looked into recycled water, but it poses some problems in the rinse. We condition our water, and you can't -- you end up with that musty smell with the recycled water.

JAMES MARTIN: You said you had oil separators and things like that?

MR. SADALY: Yes. Actually New York requires an oil separator only on the automatics because we have an undercarriage spray bar, and there is a chance of oil contamination. They do not require it for the self-serve, but we just usually take it all to the sanitary, which is better than going to a storm sewer.

MR. MUTH: The problem with the under sprayers -- Pennsylvania doesn't have the same requirement. The danger is when we're spraying water to try to get the salts and stuff off, you can get oil and stuff off the bottom of the car. But these will have oil separators in the drainage so it doesn't cause environmental contaminations.

KAREN COX: What do you do with the grit that comes off?

MR. SADALY: There is a -- when you collect it, there is a grit chamber and trench and a sump pit.

KAREN COX: You have to clean that out on a fairly regular basis?

MR. SADALY: Yes.

DARIO MARCHIONI: Going to the site, the white fence there now, will you keep it there or remove it?

MR. SADALY: Actually, there is a white fence, and actually we have used that on our other sites. You know, what -- what we could do and what we're thinking about doing, this is just a preliminary sketch, but we would add fencing for headlight control in the neighbors, so that would probably come across this side here (indicating). I mean in this area, here (indicating), too, there are some great big trees.

MR. MUTH: Our thought was to just -- unless we hear input to the contrary to do something else, to use -- that white fence is nice. Continue along with the same fencing along the back.

DARIO MARCHIONI: How about the other side where it borders the next house?

MR. MUTH: We don't have a problem with that either. You know, we're --

DARIO MARCHIONI: You don't need it on the east side, but you need it on the north and the west side.

MR. MUTH: We would like to probably stop it to where it comes up to on the other side of the street for aesthetic purposes and visibility. Like not continue it out towards the road any further than it already is. Just border the back unless you tell us to do something else.

DARIO MARCHIONI: When you come in, you will have comments from the neighbors about screening and all this. One question, I'm a little puzzled. The entrance and exit as you show the arrows, since the traffic flow is on the right side there, the north side, why won't you have the entrance as soon

as you hit the first driveway?

MR. SADALY: This site is different. Not that we don't have -- we have other sites like this where we call it reverse flow. However, because of the exiting curb cuts in locating, and all of our turn radius we keep to a minimum of 25 feet. I think engineering, you could make it a little tighter, but when you come up here (indicating), this is just an awkward turn (indicating) when you're trying to make this (indicating), just because of this property line (indicating). So it is better -- we found it is better to come in this way (indicating), and mark these entrance (indicating), and mark this exit (indicating), so there is no confusion.

DARIO MARCHIONI: The other question, will you blacktop the whole site or give us a green area in the back?

MR. SADALY: Of course, we would keep this paved here (indicating). We'll probably -- in fact, I think there is a tree there that we'll probably still keep. But as far as the traffic lanes, we'll pave, and we will not pave the entire site.

MR. MUTH: We do try -- as you can see from the pictures of the other site, we try to landscape them up as much as we can without interfering with people being able to turn and pass. There is room for some green on there. We'll show you a plan.

DARIO MARCHIONI: Have you preliminarily looked at the drainage of this lot? How you will drain the parking lot and the gutters and the roof? Will you change the rate of flow downstream? Will you have any retention pond?

MR. SADALY: We have not done a storm water analysis yet, and in -- you know, we would definitely take a look at that. I mean we would do that.

KAREN COX: The State has storm sewers on Chili Avenue now.

MR. SADALY: Actually, we would have a local site engineer take a look at that, and probably would be --

DARIO MARCHIONI: I think the Valvoline next-door has a retention area.

MR. SADALY: Because of -- I might -- like I say, without my engineer here, and -- I think it will be Avery Engineering, but this site I don't think retainage area will be required, but it depends. There will be a storm water study to State code.

DARIO MARCHIONI: Because you will have a lot of roof area, a lot of blacktop. 90 percent of the property will be surfaced, of the lot.

MR. MUTH: There are regulations. Whenever we move into a new area, we have to get a local engineer to make sure we don't cause any problems.

DARIO MARCHIONI: Downstream has to be controlled. It is following the road, going down Old Chili Scottsville Road. Then it is going along the railroad tracks, right, Larry (Nissen)? How is that drainage on this piece of property?

LARRY NISSEN: I don't know. Hopefully it will flow from back to front.

I think probably what is going to happen here, it is going to sheet flow to the road. It is a small site. It is less than an acre. I don't see the point in putting a pond in for something this small. And I don't believe it is required by DEC or any other entity.

KEITH O'TOOLE: In terms of architecture, I don't know if you want to give them direction on whether you want the bumped up roofing system that we have been doing recently on Chili Avenue or not, whether it is appropriate for this building. With regard to the last carwash that came in on Chili Ave., we had required a traffic study. I don't know if that is something you deem appropriate on this site.

With regard to noise impacts, I have asked Larry (Nissen) and he has given -- as to whether we have somebody on staff that can do this. I know a couple communities have brought people in like Sciremammano from FES Associates and others to look at noise mitigation, and that might be appropriate here in light of the vacuum cleaners and the dryers. Nothing further.

DANIEL KRESS: Just a general comment or caution. When you're trying to lay out a site plan here, you're going to need to pay close attention to your buffering, whether by distance or screening of some sort or landscaping or all of the above, because frankly, by the time you put in a reasonable degree of buffering between you and the residential properties, it is kind of a tight little parcel to work on. You don't have a huge amount of excess area left over. So I think that is going to be a big issue, you know, when some further version comes back before the Board.

RAY BLEIER: I agree.

LARRY NISSEN: I'm just going to be taking a close look at the queuing situation. That is my major concern here, to ensure that traffic doesn't back up onto Chili Avenue.

CHARLES ROBINSON: The Conservation Board would just like to see full set of landscaping plans.

There is one other comment that the Conservation Board would like to make, and that is foundation plantings, where applicable -- I'm not sure where they would fit in this design, we would like to see a lot of foundation plantings wherever appropriate. So I'm assuming here it would be the sides of these two particular buildings because you very well can't do the two in the front. A landscape architect should be able to come up with something of that nature.

FRED TROTT: Traffic Safety Committee was also concerned with the traffic building up onto Chili Avenue. We were wondering if the developer had any thought in trying to use the access road that Valvoline and the bank had, trying to work out some kind of deal with them?

MR. MUTH: I'm sorry, there is an access road?

FRED TROTT: There is a roadway that connects the bank and the Valvoline, and it goes into the Chili Paul Plaza. And it goes -- it comes off of Chili Avenue.

MR. SADALY: I don't think -- we have not spoke to the developer, but I did see just today this parcel that is back here, this road that you're talking about comes here (indicating) and curves around to the back of the plaza here (indicating). There is a new sign here for -- for this out parcel back here (indicating). So I'm not -- I can't speak for that developer, but he might be hesitant to do anything as far as traffic if he is intending to develop this.

FRED TROTT: Our feeling is just if it can be approached, I think that it might help alleviate any of the problems or concerns of back-up onto Chili Avenue. I can see where it is going to be -- in the same respect, too, we discussed it, and the way you have the plans now, it could be an issue as to how do you direct two incoming vehicles into a line. We thought maybe if they came in, went down the bypass and then up and around. If they came off the access road, and then around. But I mean --

MR. SADALY: We can do a queuing diagram. Just looking at this 200 feet, I mean that is, you know, 20 feet per cars, is a space. You know, that is ten cars, maybe one less for stacking distance between the cars, and then you have a couple -- two cars here, so -- plus you have a car, each of the automatics, and then -- and I -- we have never really seen cars more than five or six cars. I mean I --

FRED TROTT: I have worked in Henrietta and I have seen some serious traffic jams and it is a two-lane carwash.

MR. MUTH: At Delta Sonic?

FRED TROTT: Yes.

MR. MUTH: We'll take a look at that. There is a Delta Sonic in Erie as well, and I wish we cued up with what they cued up, but frankly they pass them through like in a minute or two minutes or whatever. People will get an awfully long line at Delta Sonic. They see -- they see this is a seven-minute cycle, and, frankly, it will not take them as long as they think. Like I said, these are field-tested and we have never had a problem. But we're similar demographics. But we'll look at that, and then we'll give you a cue line and see where we are.

This our first time in front of you. Just procedurally, our next step is to come back with a more detailed plan?

RAY BLEIER: Right.

MR. MUTH: Show you some of your input?

RAY BLEIER: Yes, site plan.

MR. MUTH: Do we go to get our highway occupancy permit before that?

KAREN COX: No. That is part of the site plan approval. I mean Avery can help you out with that, but that is part of the site plan approval, you would need to obtain all of the necessary permits.

MR. SADALY: Right. Actually we're working with him on a couple other sites, so -- but the next step coming before you again, we would have our engineered plans with the same --

KAREN COX: Yes.

RAY BLEIER: Check with Building Department. They will tell you exactly what you need to do.

RAY BLEIER: You will also need to apply for a conditional use permit. This is not a permitted use from what I read in G.B.

DANIEL KRESS: In conjunction with the site plan application, a conditional use permit

application should be part of it.

DECISION: The Chili Planning Board discussed your proposal for a carwash at the above address. The Board had the following concerns/suggestions:

1. Size of lot to adequately handle proposed layout of the facility, especially the queuing of cars at peak times.
2. Architectural design of building.
3. Location of vacuums.
4. Appropriate screening to adjoining neighbors.

The meeting ended at 10:00 p.m.